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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *

UNITED STATES OF AMERICA

v.

IMRAN ALRAI,

Defendant.

* * * * *

No. 1:18-cr-192-JL
December 13, 2019
8:22 a.m.

TRANSCRIPT OF BENCH TRIAL
DAY TEN

BEFORE THE HONORABLE JOSEPH N. LAPLANTE

APPEARANCES:

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United States Attorney's Office

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P R O C E E D I N G S

THE CLERK: The Court has before it for consideration this morning the closing arguments in the bench trial in criminal case 18-cr-192-01-JL, United States of America versus Imran Alrai.

THE COURT: Good morning, Mr. Hunter.

MR. HUNTER: Good morning, your Honor.

THE COURT: It looks like you're ready to proceed.

MR. HUNTER: I am.

THE COURT: Go ahead.

MR. HUNTER: Good morning.

THE COURT: Good morning.

CLOSING ARGUMENT

BY MR. HUNTER: Over the course of this trial we have learned a great deal about Mr. Alrai. Perhaps most importantly, we've learned just how far Imran Alrai is willing to go and how much he is willing to lie, cheat and steal to enrich himself at the expense of those who trust him.

And it's not just United Way and Robert Allen, though, that are the ones who suffered actual economic harm here. Mr. Alrai also used his family and betrayed his friends, all to enrich himself.

As my colleague, John Davis, explained at the beginning of this trial, this is a case about the defendant's deception, greed and betrayals. Deception because for six

1 years the defendant went to extraordinary lengths to pretend
2 that DigitalNet was someone other than him and composed
3 multiple emails to himself from this supposed Mohammad to
4 perpetrate his scheme; greed because, by ensuring that his two
5 employers directed more and more of their resources to
6 DigitalNet, the defendant quietly and quickly made himself a
7 multimillionaire in just a few years; and betrayal because the
8 defendant used his family and friends to prop up his scheme and
9 to sabotage his employers' efforts where they were most
10 vulnerable, information technology, even though both employers
11 paid and relied on Imran Alrai to be the one person who would
12 always look out for their best interests about IT matters.

13 As the Court knows, this is a 53-count indictment.
14 The first 18 counts are wire fraud. The defendant planned and
15 executed a scheme to defraud, lied in furtherance of the
16 scheme, and sent interstate emails from his home office to his
17 email account at United Way. The money laundering counts, the
18 transportation of stolen money counts, Counts 19 through 50,
19 the first set of money laundering counts and transportation of
20 stolen money deal with the international wires to Pakistan, and
21 the others relate to domestic financial transactions --

22 THE COURT: I hate to say this to you this early, but
23 you're going to have to slow down.

24 MR. HUNTER: -- where the defendant spent fraud
25 proceeds to benefit himself and his family. Count 51 charges

1 aggravated identity theft, relates to the same email charged in
2 Count 18. And, finally, Counts 52 and 53 charge the FBAR
3 crimes.

4 So, beginning with the FBAR counts, the evidence is
5 undisputed that the defendant did not file an FBAR for tax
6 years 2014 and 2016. Now, unsurprisingly, there's no email
7 from the defendant saying, "I intend to violate the tax laws,"
8 but there is strong circumstantial evidence that he willfully
9 failed to file an FBAR.

10 First, the defendant annually received a detailed
11 client organizer that specifically asked questions about
12 foreign-held assets. Second, the Schedule B of the 1040, which
13 the defendant approved every year under penalty of perjury,
14 states you must complete this part if you had a foreign
15 account. It requires a yes-or-no answer to the question, "At
16 any time during the tax year did you have a financial interest
17 in or signature authority over a financial account located in a
18 foreign country?," and it expressly refers to FBAR. I'd point
19 the Court to Exhibit 153 as an example.

20 Third, in correspondence with his tax accountants the
21 defendant specifically raised questions and received
22 information about the tax implications of earning income in a
23 foreign country. That's Exhibit 153b. And related to this the
24 defendant is highly intelligent and detail oriented, and he was
25 heavily engaged in every aspect of preparation of his tax

1 returns. This includes taking the chore of providing
2 categorized spreadsheets to his accountant. And also we see
3 the layering of funds, layering of transactions in his bank
4 accounts to decrease his profit margin and decrease his tax
5 liability. This is not a hands-off guy with his taxes. As
6 demonstrated in this trial, Imran Alrai likes to control and
7 pays attention to detail and took an especially, especially
8 hands-on approach to his taxes.

9 Finally, the defendant had a powerful motive to
10 conceal his bank account in Pakistan from both the IRS and his
11 own CPA, because disclosing information about the account would
12 help the lie to his claims to the gargantuan business expenses
13 that he took great efforts to conceal by inflating the cost of
14 goods sold on his taxes. Tellingly, the only, quote, direct
15 evidence of the defendant's lack of knowledge and intent comes
16 from a single self-serving email that the defendant wrote after
17 he was indicted on the FBAR charges in the superseding
18 indictment. It was after he had a reason to lie. As evidenced
19 throughout this trial, the defendant has had no problem
20 crafting misleading and downright false emails, including
21 self-serving emails from Mohammad and Mac Chaudhary to conceal
22 his role at DigitalNet from Robert Allen and the United Way.
23 When he sent that email to his accountant he had every motive
24 to lie, to create a self-serving trial exhibit in this case.

25 Counts 19 through 30 charge money laundering, and

1 Counts 31 through 42 charge transportation of stolen money.
2 Both sets of counts relate to the defendant's sending of
3 international wires, proceeds of the fraud scheme, about
4 \$1.2 million in all, from DigitalNet's bank account from Salem,
5 New Hampshire to a bank account in Pakistan. As Ms. Cacace
6 testified and her summary exhibits demonstrate, each of these
7 wires transferred proceeds of the scheme to Pakistan.

8 And as the testimony regarding Mr. Alrai's
9 inter-account transfers of United Way and Robert Allen money to
10 his various business accounts demonstrates, Mr. Alrai knew
11 where the money was coming from, United Way and Robert Allen,
12 and he was taking active steps to hide it through over 500
13 inter-account transfers and then shipping it off to Pakistan.

14 Counts 43 and 50 are just domestic examples of the
15 same thing, Mr. Alrai using fraud proceeds to benefit himself
16 and his family. He's paying off mortgages, he's fattening his
17 retirement accounts, paying for landscaping, and in July of
18 2018, soon after the search warrants in this case, the
19 defendant withdrew half a million dollars of fraud proceeds
20 from one of his bank accounts and placed the money in two new
21 accounts at different financial institutions.

22 Now, for purposes of money laundering, "proceeds" is
23 defined statutorily, and this is laid out in the government's
24 trial brief, to mean any property derived from or obtained or
25 received directly or indirectly through some form of unlawful

1 activity, including the gross receipts of such activity. In
2 other words, even if some of the proceeds went to providing
3 legitimate services from Pakistan, the defendant's guilty of
4 money laundering if he committed wire fraud.

5 So, let's talk about wire fraud. The evidence in this
6 trial demonstrates that the defendant orchestrated a scheme to
7 create and use his company, DigitalNet, as a means of
8 embezzling money from his employers, United Way and Robert
9 Allen Group. He then used this money to pay off his house in
10 Windham, pay for plastic surgery, take fancy vacations, fatten
11 his bank and investment accounts for himself and his family,
12 and as seed money for his other business ventures.

13 The key to the scheme was Mr. Alrai's executive-level
14 position as the head of IT for both United Way and Robert Allen
15 Group. From there he could ensure his new and inexperienced
16 company got lucrative contracts, and he could shield DigitalNet
17 from scrutiny when it failed to deliver.

18 The story of DigitalNet begins after Mr. Alrai was
19 hired at United Way. Unknown to both his employers at the
20 time, Mr. Alrai was purportedly working full time as the IT
21 Director at both companies. When United Way hired Mr. Alrai,
22 they had some concerns about their IT costs. They were too
23 high. They didn't think they were getting value. And, as Pat
24 Latimore testified, there was some concern that some of the
25 staff at United Way were too close to their current IT vendor,

1 CWAIN.

2 So, United Way made a reasonable business decision.
3 They hired their own IT expert, something they didn't have.
4 They wanted somebody in their corner who understood this stuff
5 to make sure that they hired the right vendors and that they
6 didn't get taken advantage of.

7 If there's one thing that's clear from this trial,
8 aside from, the government will argue, the defendant's guilt,
9 is that IT is complicated stuff. There's a lot of jargon.
10 It's easy to get lost and not understand what service is being
11 provided and how much it's worth. Every single witness from
12 United Way testified as much, and we've had three experts
13 testify about IT services, costs and reasonable markups. It's
14 complicated, it's technical. That's the reason why Imran Alrai
15 was able to dupe United Way and Robert Allen and continue to
16 milk United Way for millions of dollars over six years.

17 United Way was looking for a guy to get their house in
18 order, but Mr. Alrai lied about -- he breached -- he broke his
19 employer's trust right from the very beginning. First, he lied
20 to get the job by providing fake references and a false resume.
21 Once at United Way, the defendant suggested an IT risk
22 assessment and, naturally, recommended DigitalNet for the job,
23 and, of course, DigitalNet was hired and paid \$50,000.

24 Now, it's not exactly clear what DigitalNet actually
25 did for the health assessment. Kal Wahbe recalls remoting into

1 United Way's system and telling Mr. Alrai about what he saw.
2 But the folks at United Way didn't recall seeing anyone from
3 DigitalNet on site actually conducting the assessment. But one
4 thing is clear. Even if DigitalNet didn't do its job and
5 conduct a risk assessment of United Way's IT infrastructure,
6 Imran Alrai did conduct a different type of risk assessment at
7 United Way. He assessed the company's risks and
8 vulnerabilities and determined just how he was going to exploit
9 them. Mr. Alrai saw that there was a poor IT environment at
10 United Way, and that the company was paying way too much for
11 IT. Even a little improvement would deflect any concern about
12 the work that DigitalNet was doing. He also knew about the
13 weaknesses in United Way, in their system, particularly the RFP
14 process and the trust that United Way employees had in each
15 other. United Way didn't have an IT expert. That's why they
16 hired him. They would defer to his expertise, and that is
17 exactly what happened.

18 Every United Way witness that knew anything about the
19 2013 RFP process, Pat Latimore, Azim Mazagonwalla, Diane
20 Dragoff, Stan Burrows, testified that Mr. Alrai, alone,
21 circulated the RFP, received the RFP responses, reviewed them
22 and scored them. This is also reflected in contemporaneous
23 emails, examples Exhibit 609, Pat Latimore writing to Stan
24 Burrows, "Imran is in the process of scoring the RFPs. He's
25 reviewing the results with me this week." And he did. He

1 reviewed the score sheet with Pat Latimore. "Imran is in the
2 process of scoring the RFPs." And Imran did review the score
3 sheet with Pat Latimore. She testified to that. But United
4 Way relied on Mr. Alrai, their IT guy, the expert in their
5 corner, to pick the right vendor, and of course they did.
6 That's why they hired him. As Mr. Mazagonwalla put it, "I
7 don't expect senior staff to commit fraud."

8 Stan Burrows was the only other IT guy around, but he
9 was a volunteer. He gave advice. He even asked Mr. Alrai if
10 he could help score the RFPs and the RFP responses. Imran
11 Alrai said, "No." He declined the invitation. He didn't want
12 oversight. When cross-examined, Mr. Burrows cautioned the
13 defense, "Don't ascribe too much authority to my role as a
14 volunteer. I don't have the influence you're suggesting."
15 Again, Mr. Alrai controlled the process here.

16 The RFP Mr. Alrai circulated on January 13th had a
17 deadline -- next slide -- of January 25th at 5:00 p.m. Eastern
18 Standard Time, and on January 25th, 2013 Mr. Alrai got three
19 responses, one from All Systems Integration, one from
20 mindSHIFT, one from Eze Castle dated January 25th, 2013. And
21 there's also a response, an RFP response, from DigitalNet also
22 dated January 25th, 2013. Despite its best efforts, United Way
23 has not been able to find these responses on their systems, and
24 we know they maintained RFP responses. They got a 2011 RFP
25 response from TBS, that's John Meyer's company, among the files

1 at Mr. Alrai's desk at United Way. The reason why we have
2 these RFP responses from mindSHIFT, Eze Castle and DigitalNet
3 is because they were found on the defendant's personal
4 computer. He had PDFs of the first three responses, All
5 Systems, mindSHIFT and Eze Castle, and in a subfolder called
6 "Personal Business Initiatives" had a word and PDF version of
7 the DigitalNet RFP response, 803.1 and 803.1a. And the
8 metadata of that Word document shows that four days after
9 receiving the other responses on January 29th, 2013 Imran Alrai
10 was in the Word document. He saved it. He printed it to PDF.
11 Imran Alrai edited DigitalNet's RFP response, and he backdated
12 it to January 25th, 2013, and then he went on to score the
13 responses. He not only had the answers to the test in advance,
14 but he graded the test. It's no surprise that DigitalNet got
15 an A.

16 After getting the contract, Mr. Alrai wasn't in the
17 clear. Pat Latimore wanted more information. She wanted to
18 make sure that DigitalNet was an established company with many
19 customers and wanted to get references. United Way wanted to
20 do their due diligence, and, again, they relied on Mr. Alrai.

21 Exhibit 612 shows, in response to Ms. Latimore's
22 request, Imran Alrai, using the fake name "Mohammad" from the
23 info@digitalnet.us email account, provided three references,
24 three fake references. There's Mr. Khan, who is purported to
25 be the IT Director at Barneys in New York, Steven R. Anderson,

1 the CEO of AISA Systems Corporation in Fairfax, Virginia, and
2 Nabile Ejaz, the supposed IT Director of Abilities, Inc. in New
3 York. And we heard testimony from Mr. Khan and Mr. Ejaz. They
4 said they didn't provide a reference. And it's apparent from
5 the bank records that DigitalNet never did any work for Barneys
6 or Abilities in New York. And AISA Systems Corporation, that
7 company doesn't exist, but AISA in Virginia certainly does, and
8 that was Mr. Alrai's company. He also provided Steve Anderson
9 as a reference when he applied to get the job at United Way
10 using an AISA Consulting email address.

11 And then, in response to Pat Latimore's inquiries for
12 diligence, again, writing as Mohammad, Mr. Alrai said the
13 contract with United Way would only represent 9 percent of
14 DigitalNet's revenues in the U.S. Of course, the Court has
15 seen the financial analytics of DigitalNet's bank accounts. It
16 was a lot more than 9 percent. United Way and Robert Allen
17 were DigitalNet's only U.S. customers. That was simply a lie.

18 DigitalNet was a new company with no experience. It
19 was formed ten days -- next slide, please, Ms. Sheff -- ten
20 days before Mr. Alrai brought DigitalNet to United Way to do
21 the risk assessment. It was formed in Delaware 8/7/12. The
22 bank accounts opened 8/15/2012. 8/17 is when DigitalNet
23 contracted with United Way to conduct a health and security
24 assessment. And only after securing the contract with United
25 Way did DigitalNet Pakistan open a bank account on April 3rd of

1 2013.

2 So, United Way did their best. They called the fake
3 references. Pat Latimore even met with someone she thought was
4 a principal of the company, Mac Chaudhary, at United Way.
5 Ms. Latimore describes the man she met as in his 50s, of South
6 Asian descent, tallish, said his English was good, they had no
7 problem communicating. She said he did not have a thick
8 accent. The Court saw and heard Mac Chaudhary when he
9 testified. Whoever Mr. Alrai brought to DigitalNet to meet
10 Ms. Latimore, it was not Mac Chaudhary. And Alrai's buddy kept
11 up the charade. He claimed DigitalNet had many customers and
12 never said a word about DigitalNet being Mr. Alrai's company.

13 It worked. United Way thought they had hired an
14 experienced IT vendor, and Mr. Alrai had established his money
15 stream. So, he decided to do the same thing at Robert Allen,
16 his other employer. In August of 2013, only a few months after
17 fraudulently obtaining the United Way contracts for DigitalNet,
18 the defendant convinced Robert Allen to hire DigitalNet to
19 provide IT services, including for website development and
20 telephone services.

21 Now, Robert Allen didn't have a formal procurement
22 process, so it was easier this time for Mr. Alrai. As
23 Mr. Chaudhary testified, "When it came to the contract, I
24 relied on Imran's recommendation." After all, Mr. Alrai was
25 their CIO. He had been working there for a while. They

1 trusted him on IT matters. As far as Robert Allen Group knew
2 at that time, Imran Alrai wasn't working for anyone else.

3 The scheme at both companies played out in strikingly
4 similar ways. At both Robert Allen and United Way he used the
5 same front company, DigitalNet. He exploited his position as a
6 trusted executive and IT expert to control the process and
7 secure the contracts, including providing both companies with a
8 fake client list. He foiled every effort to determine who
9 DigitalNet actually was. He used the same bank accounts at
10 Pentucket to receive and launder revenues. He used the same
11 bank account in Pakistan to receive proceeds of the scheme. He
12 used his father as a straw principal to hide his ownership of
13 the company. And he sent messages to the victims signed by
14 Mohammad and Mac Chaudhary to, again, conceal his identity and
15 his connection with DigitalNet. And even after the jig was up
16 he attempted to extort additional funds from both Robert Allen
17 and United Way by threatening to terminate the company's phone
18 services.

19 The only difference between DigitalNet and United Way
20 is that Robert Allen left United Way; in fact, he was pushed
21 out after Robert Allen found out that he was also employed by
22 United Way and a new independent IT person came in and figured
23 out what was going on. Now, Mr. Riviera didn't figure out that
24 Mr. Alrai was DigitalNet, but he immediately saw that, despite
25 DigitalNet receiving hundreds of thousands of dollars in a

1 short period of time, DigitalNet wasn't qualified and wasn't
2 doing the work it was hired to do. Once there was an actual IT
3 expert checking Alrai's work, Robert Allen was able to cut
4 through the web of lies, cut through the jargon, and see that,
5 despite DigitalNet creating a document noting that a lot was
6 100 percent complete, DigitalNet had just built a bridge to
7 nowhere and didn't actually produce anything.

8 In gaining the website contract, again, DigitalNet had
9 claimed its expertise that it didn't have, just like it did
10 with United Way. And because of this, because someone was
11 actually checking his work, Alrai was only able to bilk
12 \$400,000 from Robert Allen Group. You see, this is critical.
13 At the core of the scheme is that Mr. Alrai needed to be *the* IT
14 guy so he can direct his employers to hire his company and can
15 run interference to make sure that no one can truly scrutinize
16 DigitalNet, what they are charging and what they're doing.

17 The testimony from Robert Allen and United Way
18 witnesses are strikingly similar. Chuck Cioffi from Robert
19 Allen, Pat Latimore, Azim Mazagonwalla, Diana Dragoff, Jack
20 Rotondi from United Way, they also trusted Imran. They relied
21 on Mr. Alrai.

22 This is illustrated vividly with what happened in
23 2016, when United Way tried to do additional diligence on
24 DigitalNet. Jack Rotondi wanted some documents from DigitalNet
25 and wanted to communicate directly with Mac Chaudhary, the

1 supposed principal of the company. Naturally, he relied on
2 Imran Alrai to make the connection, and, of course, as we've
3 seen time and again, despite wanting to talk with Mac, they
4 only communicated by email. And Rotondi wanted some documents.
5 He wanted a certification of financial health, a banking
6 reference letter of good standing, and a total number of
7 clients and sample client list. And part of what was going on
8 here also is Diane Dragoff doing -- I think it was Diane
9 Dragoff -- doing that additional web search of DigitalNet, not
10 finding much of a web presence. They wanted to figure out is
11 this really the established, experienced IT company that we
12 think that it is? And in his July 13, 2013 email Mr. Alrai
13 introduced Jack Rotondi to Mac, again by email, and that same
14 day, July 13th, 2013, Imran Alrai got to work to create the
15 documents that Jack Rotondi was requesting.

16 Now, the letter from Pentucket Bank, that actually was
17 provided by Pentucket Bank, and that letter was found at
18 Mr. Alrai's home office in Windham. But then there's this July
19 18th, 2016 financial health attestation signed by Mac
20 Chaudhary, and this document that was received by Jack Rotondi
21 is hand signed by Mac. But the Word version of the document
22 that we found on the defendant's computer shows a couple of
23 things. First, it shows that the author was Imran, and it's
24 created on July 13th. That's the day. That's the day he
25 introduced Jack to Mac. And the letter, though the content is

1 the same, obviously the date is different, but the first draft
2 of the letter he's using a really fake-looking digital
3 signature. And so, Mr. Alrai had his dad sign it, sign the
4 letter. The only difference between what they actually got is
5 that Mr. Alrai had Mac Chaudhary sign the document that he
6 drafted, and, as we heard from Mac Chaudhary, he never refused
7 to sign a document that his son put in front of him.

8 Now, I want to spend some time with Exhibit 118. So,
9 this is not only a wire fraud count, but it's also the
10 aggravated identity theft count, Count 51.

11 On July 18th, 2016, at 5:53 p.m., Mr. Rotondi received
12 an email from Mac Chaudhary attaching a fake client list for
13 DigitalNet. Now, Mr. Chaudhary at the trial claimed for the
14 first time that he actually did send this email -- he denied it
15 in the past -- and he got the list of clients from the office
16 in Pakistan. But let's get real. At this point in 2016 United
17 Way is examining DigitalNet. An income stream for Imran Alrai
18 over \$1,000,000 per year is at risk. There is no way that Mr.
19 Alrai is going to let his dad, a retired doctor who knows
20 nothing about IT, send this email. There's also no way that
21 Imran Alrai is going to rely on programmers in Lahore to draft
22 this critical document. That's why we found the Word document
23 on Mr. Alrai's computer.

24 And Mr. Alrai had no qualms about using other people's
25 identities before, whether it's stealing his friend Faisal

1 Bhatti's identity to provide a fake reference to get a job,
2 stealing Mr. Khan and Mr. Ejaz's identities to provide fake
3 references for DigitalNet, or stealing his own father's
4 identity by getting a buddy to pretend to be Mac Chaudhary to
5 convince Pat Latimore that DigitalNet is a legitimate company.

6 And we also have the forensic evidence from the
7 computer, again, the email to Jack Rotondi sent July 18th, 5:35
8 p.m. We found a Word version of this document providing the
9 fake clients, the author of that Word document, Imran; last
10 saved by Imran; content created in the document July 18th,
11 2016, same day as the email, 9:54 a.m.; Documents printed, and
12 we saw the PDF showing it was printed to PDF 7/18/2016 at 4:41
13 p.m. Date last saved. Again, last saved by Imran July 18th,
14 2016, 5:25 p.m., eight minutes before Jack Rotondi received the
15 document from Mac. There is no reasonable doubt that Imran
16 Alrai sent that email.

17 As laid out in the government's trial brief, it
18 doesn't matter if Mr. Chaudhary gave permission. What matters
19 is that Mr. Alrai used his father's identity unlawfully in this
20 case to further his scheme to defraud. And that's exactly what
21 happened here. Imran Alrai used his father's identity to short
22 circuit United Way's due diligence efforts and keep the money
23 flowing from United Way into his bank accounts.

24 So, what about the other wire fraud counts? How do we
25 know that Mr. Alrai sent those emails? How do we know that he

1 is Mohammad? First, it's important to note that Mr. Alrai need
2 not send the email to be guilty of the charged counts. He only
3 needs to cause the wire to be sent. And this is also true of
4 the money laundering counts. He needs to cause the wires; he
5 doesn't have to be the actual sender. And what the evidence of
6 this case demonstrates, nothing happens at DigitalNet that
7 Mr. Alrai doesn't cause. He retains tight control of
8 everything. So, even if there's some guy named Mohammad
9 camping out in Mr. Alrai's backyard and sending the emails,
10 Mr. Alrai caused the wire. But the evidence here is
11 overwhelming that Mr. Alrai sent the emails charged in Counts 1
12 through 17 of the superseding indictment, that he was Mohammad.

13 So, let's count some of the ways. There's about 14 of
14 them. First, and I direct the Court to summary Exhibit 925,
15 Mohammad sends emails only when the defendant's at home and
16 never while the defendant's at work at United Way. Mr. Alrai
17 and Mohammad are like Clark Kent and Superman; they're never in
18 the same place at the same time. Mohammad sends emails from
19 the IP address of the defendant's home internet network. All
20 of Mohammad's invoices are stored on the defendant's home
21 computer, as are the Microsoft Word versions of the templates
22 used to create those invoices, all on Mr. Alrai's home computer
23 in Windham, New Hampshire. The defendant usually corresponds
24 with Mohammad only when he's going to be at United Way the next
25 day to present the DigitalNet invoice for payment. The

1 testimony was a little tedious, but the Court saw the pattern
2 in the summary chart that more often than not, in fact, most of
3 the time Mohammad sends an email from info@digitalnet from the
4 defendant's home internet network. The next day Imran Alrai is
5 swiping in at United Way to process the invoice for payment.
6 The phone number Mohammad uses for his invoices goes to an
7 Andover, Massachusetts phone number, but no one works in the
8 Andover office. They just get mail there. All of the HR files
9 from Mohammad's employees are, again, stored in the defendant's
10 home office in Windham, New Hampshire.

11 And the defendant gets Mohammad's mail. Here's an
12 example, Exhibit 879, found in the defendant's home office in
13 the search warrant addressed to Mr. Mohammad Hassan referring
14 to DigitalNet as his company. The defendant corresponds with
15 Mohammad only when the subject involves extracting money from
16 United Way and Robert Allen Group. The defendant never emails
17 Mohammad about staffing challenges or other subjects that
18 real-life business colleagues discuss. Mohammad seems to
19 always be on the job; no one's filling in for him. He only
20 sends emails during working hours in the U.S. and, again, only
21 when Imran Alrai is not at work at United Way. And Mohammad
22 apparently works for free. There's no payroll or bank record
23 paying a Mohammad Hassan. Mohammad never calls or visits his
24 valued employees embedded for years at United Way, and no one,
25 including other DigitalNet employees, has ever seen Mohammad.

1 No one, including other DigitalNet employees, has ever spoken
2 to Mohammad. Imran Alrai is DigitalNet. Imran Alrai is
3 Mohammad.

4 The evidence is also overwhelming that Mr. Alrai
5 intended to defraud his victims. Now, in the context of wire
6 fraud, the First Circuit defines a "fraud" to mean to deceive
7 another in order to obtain money or property. That's from the
8 First Circuit jury instructions. The evidence here is
9 overwhelming that Mr. Alrai intended to deceive United Way and
10 Robert Allen Group to obtain money or property. He got over
11 \$7,000,000 through his deceit. He also intended to deprive
12 United Way and Robert Allen Group of their intangible right to
13 control their assets, and this is also alleged in the
14 superseding indictment.

15 Again, the government need not show actual harm to the
16 victims, only that, by depriving the victim of necessary
17 information to make discretionary economic decisions, there was
18 a risk of economic harm.

19 Alrai used his position, again, as an insider at these
20 two companies to undermine their procurement process and got
21 his under-qualified company, DigitalNet, lucrative contracts
22 with his employers. And then in 2016 he scuttled the due
23 diligence efforts, again using his position by providing false
24 information about the RFP process and about DigitalNet's
25 experience and capabilities.

1 As laid out in the cases cited in the government's
2 trial brief, this deceit denied the victims of their intangible
3 right to control their assets by depriving them of the
4 information necessary to make discretionary economic decisions,
5 which created a risk of economic harm.

6 But, again, let's get real here. This was all about
7 lying to get money. If the defendant was acting in good faith
8 and he was really just wanting to provide value and the lies
9 were just incidental, why did he repeatedly refuse to engage in
10 new IT projects unless DigitalNet could be brought in and
11 usually at a much higher cost?

12 And I direct the Court, there's an example of this,
13 Exhibit 635, and Dom Pallaria testified about an IT project he
14 was trying to get started that was scuttled because he wouldn't
15 bring in DigitalNet because it was too expensive. Why did the
16 defendant lie year after year on his conflict of interest form
17 about his lack of relationship with DigitalNet? As an
18 executive at United Way, he must have known that he was
19 exposing United Way to a risk, not only in filing a false 990,
20 but if the conflict were ever found out by donors, there's a
21 real risk of harm to United Way's reputation and ability to
22 collect donations.

23 THE COURT: Hold on a minute. All right. I'm
24 actually trying to make sure I'm keeping with you, not just the
25 reporter.

1 MR. HUNTER: Okay. And why, again, if he was acting
2 in good faith, he was trying to run a legitimate business, why
3 did he use so many separate accounts at different banks to
4 launder money, cheat on his taxes and hide his profits? Why
5 did he use AISA as a shell holding company to hide his
6 connection with DigitalNet and hide the money he gained from
7 the scheme? Why immediately after the search warrants did the
8 defendant move and shelter \$500,000 of proceeds into new bank
9 accounts? Why wasn't United Way able to find records of the
10 RFP process, and, despite having them on his personal computer,
11 why didn't the defendant provide them when they were doing
12 their due diligence in 2016 and wanted to -- and were asking
13 questions about what happened in 2013? Why did the defendant
14 move servers at United Way without notice after the
15 announcement of the CBIZ risk assessment and immediately being
16 asked about the location of where United Way's data was being
17 stored? Why did he use his father to sign all DigitalNet
18 documents and wire funds? Why did he use Elaine Singer, who
19 never had any accounting role at United Way, to approve United
20 Way invoices to give himself a layer of separation? This is a
21 recurring theme, again, Mr. Alrai spinning this web to create
22 this appearance of separation between him and DigitalNet, and
23 we've talked about some of that, his father, the bank accounts,
24 Elaine, and also after the fact Stan Burrows. He is the one
25 that graded the RFPs, apparently.

1 Why send emails pretending to be Mohammad? Why ask
2 Kal Wahbe directly and indirectly to hide Imran Alrai's
3 ownership and connection with DigitalNet from United Way? Why
4 is he maximizing and pushing the limits of the budgeting
5 process to make sure the maximum amount of money possible is
6 going to DigitalNet? Why threaten both Robert Allen and United
7 Way to terminate phone services once the jig was up? Why
8 didn't he cooperate with United Way's efforts to regain control
9 of their IT system and lie about a safe in his home with
10 passwords and other documentation of the system? Why did he
11 lie to Lorissa Guzman about having no overseas business
12 interests and no international wirings over \$10,000? And after
13 he was found out why did he continue to lie to John Mulvaney,
14 when he could have come clean? Again, he said all the
15 passwords and documentation were in his safe because he didn't
16 actually have them at United Way. When he was asked about who
17 worked with him at DigitalNet he, again, lied about this
18 Mohammad character and made up a new name, a character named
19 Mike who works with Kal. He claimed he had never heard of AISA
20 Corporation, despite forming it and it having headquarters at
21 his then home address in Virginia and using AISA Corporation as
22 a reference both for him to get a job and as a reference for
23 DigitalNet. He told John Mulvaney he didn't know his father's
24 middle name.

25 And then there's the kicker. Mr. Alrai ends the

1 interview with John Mulvaney by saying he never supplied
2 DigitalNet with inside information during the RFP process.
3 This is despite Mr. Alrai knowing that he is DigitalNet and
4 that he edited the DigitalNet RFP response after getting the
5 other bids. He could have come clean. He could have
6 explained, "I was just trying to get my company started, I lied
7 to get the contract, but I've really provided value here. No
8 harm, no foul." But he didn't do that. The reason he lies is
9 because the defendant knows that the truth of what he's done is
10 indefensible. That is consciousness of guilt. That is intent
11 to defraud.

12 Then, of course, there's Mr. Alrai's extreme profits,
13 the large delta between revenues and costs. A person acting in
14 good faith who isn't trying to defraud his victims would not
15 have run up so much personal wealth so quickly.

16 So, let's talk about the millions of dollars Mr. Alrai
17 made through his scheme. The evidence in this trial
18 demonstrates in four independent ways that Alrai used
19 DigitalNet to steal over
20 3.5 million bucks from his victims even after accounting for
21 any possible value provided by DigitalNet. First, we've got
22 the \$400,000 paid to Robert Allen Group and all the testimony
23 from Dean Riviera about nothing being done for that money.
24 Then Greg Naviloff did a detailed analysis of United Way's
25 invoices and contracts, an analysis that even Mr. Alrai's

1 experts had to concede was thorough, and concluded that through
2 a combination of exorbitant markups, billing United Way for
3 services not actually provided and getting United Way to pay
4 twice for the same services, Alrai stole over \$3.1 million from
5 United Way. Averaged out, that's a 914-percent markup for the
6 services that Mr. Naviloff analyzed, a figure even the
7 defendant's own IT expert agreed probably is not reasonable.

8 But the DigitalNet invoices are vague, as a number of
9 witnesses testified. It was hard to tell what DigitalNet was
10 billing for and what they actually did. This is an important
11 part of the scheme. United Way had to rely on Mr. Alrai to
12 check on DigitalNet and make sure they were getting what they
13 paid for. So, Mr. Naviloff checked his work, he tested his
14 assumptions by conducting an independent analysis, looking at
15 Mr. Alrai's bank accounts and taxes to determine Mr. Alrai's
16 personal enrichment from the scheme. The Court heard the
17 testimony, saw the summary slides. Bottom line: Mr. Alrai
18 pocketed about 3.7 million bucks.

19 But there's more. John Meyer testified about the cost
20 of services United Way is receiving now. As noted by Pat
21 Latimore, now that United Way is using a different vendor, she
22 sees that United Way is receiving services that she thought
23 they had but didn't with DigitalNet. And Mr. Meyer testified
24 that, although United Way is now paying more for servers with
25 more memory so they don't have to keep rebooting them to keep

1 the system up, they're paying more for high-availability backup
2 that they didn't have when he got there, and they're paying
3 more for phones with more security and more bells and whistles,
4 the overall spend for United Way is less, and, again, because
5 the CIO's compensation services are included in his fee,
6 they're paying less over the same period of time to the tune of
7 \$3.7 million.

8 But the evidence doesn't stop there. We actually have
9 a window into the actual spend for DigitalNet from
10 Mr. Naviloff's analysis of Mr. Alrai's business accounts.
11 After clearing out the clutter of the inter-account transfers
12 Mr. Alrai used to artificially inflate DigitalNet's cost of
13 goods sold and decrease his purported profit, and even
14 including charges on the DigitalNet credit card, which, as the
15 Court has heard, included a lot of personal expenses,
16 DigitalNet actually paid about \$44,500 a month for vendors,
17 payroll and other operating expenses. This is roughly in line
18 with TBS's, United Way's current vendor, monthly flat rate of
19 \$44,800 that United Way is now paying.

20 So, if we cut through the smoke, cut through the
21 jargon, the numbers line up. The scheme worked. In just five
22 years Imran Alrai stole well over \$3.5 million from his
23 victims.

24 Now, Mac Chaudhary testified in this case, the
25 defendant's father. It's clear from Mr. Chaudhary's testimony

1 that he loves his son and that he would do anything for him,
2 even lying under oath. It's also apparent from his testimony
3 that Mr. Chaudhary is not an IT expert, and he's not really a
4 businessman. He's a retired doctor who doesn't speak English
5 very well and was completely financially dependent on his son.

6 One point of Mr. Chaudhary's testimony was
7 particularly revealing. While talking about how he would sign
8 anything that his son put in front of him, that he never
9 refused to sign anything, Mr. Chaudhary said something to the
10 effect of, "In the beginning I used to read them, the
11 documents, but later on I used to glance over it quickly, and
12 if it looked right I would sign." Then he paused briefly and
13 said, "He is my son." We may never know exactly how much
14 Mr. Chaudhary knew about Mr. Alrai's lies and deceit, but we do
15 know that he trusted his son and that his son abused that
16 trust.

17 Part of what makes Imran Alrai's fraud particularly
18 troubling is Mr. Alrai's willingness to use and betray those
19 closest to him to enrich himself. We've talked about the
20 defendant's father, but the defendant also used his wife in her
21 position of trust at Pentucket Bank to get around the bank's
22 requirement that people fill out international wire transfer
23 forms in person in order to get his money over to Pakistan.
24 And when he was called on it, Mr. Alrai was upset. He drove to
25 the bank and had a confrontation, a confrontation that

1 Mrs. Alrai was trying to get into a personal office so he
2 wouldn't make a scene. It was going to be a little less
3 convenient for him to launder his money if he had to actually
4 drive his dad to the bank to fill out the form instead of just
5 getting him to sign it at his house before Imran Alrai emailed
6 it to the bank using his father's email address.

7 And then there's Mr. Alrai's long time friend, Faisal
8 Bhatti, friends since high school, roommates. Mr. Alrai stole
9 his identity to provide himself with a glowing reference at
10 United Way, and not two years later Mr. Alrai went to
11 Mr. Bhatti's funeral to console him. At that funeral Mr. Alrai
12 made an interesting admission, this is 2014, speaking to a
13 friend who's far away from New Hampshire and Boston, far away
14 from the locus of the fraud, and Mr. Alrai said that he had
15 started a new IT company, DigitalNet, and was working to get it
16 off the ground. It was his company. He was just starting it.
17 And despite Mr. Chaudhary now trying to take the blame for his
18 son and claiming with immunity that he, a retired doctor who
19 doesn't know the first thing about information technology,
20 started an internet -- and IT services company, there's no
21 doubt, reasonable or otherwise, that DigitalNet was Imran
22 Alrai's company. Alrai was DigitalNet.

23 And speaking of Mr. Chaudhary, an interesting pattern
24 emerged during his testimony. When Mr. Chaudhary thought his
25 answer would hurt his son, he would change his story from what

1 he'd previously said, and he'd lie, but when he didn't know
2 what he had to say would hurt Mr. Alrai glimmers of truth came
3 through in his testimony. For example, for the first time at
4 trial Mr. Chaudhary suddenly remembered that DigitalNet
5 apparently did have an employee named Mohammad Hassan who, of
6 course, was located in Pakistan. Apparently, that's where all
7 the exculpatory evidence is. But Mr. Chaudhary didn't know
8 about the forensics done on the emails, the wire fraud emails
9 from Mohammad, and he didn't know about the forensics done on
10 Mr. Alrai's computer. He didn't know that we knew that
11 Mohammad sent his emails from Imran Alrai's home internet
12 network in Windham, New Hampshire. So, he said Mohammad's in
13 Pakistan. And when questioned about whether he, who was also
14 at the home in Windham, ever sent a Mohammad email, he said,
15 "No." Mr. Chaudhary is not an IT guy. He didn't know that
16 answer would hurt his son.

17 Mr. Chaudhary also tried to describe DigitalNet
18 Pakistan as this long-standing business with lots of
19 programmers, a business with lots of clients, and that UltPult
20 had nothing to do with DigitalNet. But then he said that, once
21 the government froze the accounts in America, those are the
22 DigitalNet and AISA accounts that contain the proceeds from
23 Robert Allen and United Way, the United Way money, that the
24 UltPult programmers suddenly had to be paid through an account
25 in Pakistan, and that they were running out of money to pay all

1 the programmers from DigitalNet. In other words, once the
2 United Way gravy train was shut down, UltPult and DigitalNet
3 Pakistan are going to have to close shop.

4 Now, that glimmer of truth that Mr. Alrai is using
5 money stolen from United Way to fund his other business
6 projects is supported by other evidence in this case. Now that
7 they have to close shop without cash from United Way,
8 DigitalNet Pakistan payroll is continuing after United Way
9 terminates its relationship with DigitalNet. They're not doing
10 United Way work.

11 During Mr. Alrai's interview with Ms. Guzman he first
12 denied a connection with DigitalNet, but, when confronted, he
13 claimed that DigitalNet was being used to develop gaming
14 products in Pakistan -- that's UltPult -- and that DigitalNet
15 was working on other projects. And at other times Mr. Alrai
16 claimed DigitalNet Pakistan was involved in R and D for facial
17 recognition software and other software completely unrelated to
18 United Way. They do everything.

19 There's no doubt that Mr. Alrai is an entrepreneur.
20 He's got a lot of business ideas, and he outlines some of these
21 ideas in the journals of his that are in evidence. But, like
22 any good entrepreneur, Mr. Alrai needs capital, and so
23 Mr. Alrai conscripted United Way and Robert Allen Group to be
24 unknowing angel investors in his other business projects.
25 That's not the American dream, like the defense counsel called

1 it in his opening. That's fraud. And that was the scheme, to
2 abuse his position of trust in an area where his victims were
3 most vulnerable, information technology, and to steal their
4 money to enrich himself. There is no reasonable doubt that
5 Imran Alrai knowingly and wilfully orchestrated and
6 participated in a scheme to defraud United Way and Robert Allen
7 Group, and that he sent interstate wires in furtherance of that
8 scheme. The government asks that the Court return the verdict
9 that the evidence demands and find the defendant guilty on all
10 counts of the superseding indictment. Thank you.

11 THE COURT: Thank you, Counsel. We'll take a recess,
12 and then we'll hear defense argument.

13 THE CLERK: All rise.

14 (Recess taken from 9:15 a.m. to 9:30 a.m.)

15 THE CLERK: All rise for the Honorable Court.

16 THE COURT: Please be seated.

17 All right. Mr. Harrington, please proceed.

18 MR. HARRINGTON: Thank you, Judge.

19 CLOSING ARGUMENT

20 BY MR. HARRINGTON: Your Honor, the government started by
21 saying that there was betrayal and deception, but what I would
22 suggest to you is, regardless of whether you find betrayal or
23 deception, the issue is really whether my client had an intent
24 to commit a fraud against United Way, and what I'm suggesting
25 to you is that the evidence shows that there was no intent to

1 defraud, and I'll go into those factors as to why in a few
2 moments, but I wanted to start by focusing on a couple of other
3 charges first, and then I'm going to circle back to this topic.

4 Now, the FBAR charges I want to touch base with
5 briefly. As you heard from Mr. Terry and in regard to the
6 government's arguments, the forms, as you saw, for every year
7 that the FBAR had not been filed, from 2013 through 2018, my
8 client filed, filed late, and, once he had learned of the
9 requirement, he clearly communicated with Mr. Terry, and on
10 those forms, which are in evidence for you as exhibits, you see
11 that the stated reason was, "Not aware I needed to file."

12 The government points to other things that you should
13 consider as evidence that he knew or he should have known, I
14 suppose, but really what we're talking more about is a willful,
15 which is not just negligence.

16 THE COURT: He should have known --

17 MR. HARRINGTON: Yeah. And so, that's what I would
18 suggest to you, is that, although the kind of file was sent to
19 Mr. Alrai from the CPA with a checklist of things that you
20 should look at, it's clear that that checklist was not ever
21 sent back to Mr. Terry. He indicated as such.

22 Additionally, he indicated that when the IRS tax
23 documents were filled out the section that related to the issue
24 of whether that had been done with a foreign bank account,
25 again, were left blank. So, there was no attestation by Mr.

1 Alrai that he did or didn't. It was just left unaddressed.

2 There was a couple of documents you saw, Judge, where
3 the document was checked "No," as not having a foreign account,
4 but you may recall Mr. Terry actually said that was due to the
5 fact that he had had a new program for tax preparation in those
6 years, and if it was not answered it would simply default to
7 "No."

8 So, again, we're left in a situation where there is
9 actually no affirmative response by Mr. Alrai, which is
10 indicative of simply not being aware of it, consistent with
11 what he filed when he did his late filing. There's no
12 indication that he affirmatively said, "No, I don't have it,"
13 which, obviously, would be clear evidence that he was aware of
14 it if he indicated, "No, I don't have foreign bank accounts."
15 But we just don't have that.

16 Additionally, what's considerable for you to consider
17 and disregard is, when he did the late filing he did so without
18 penalty and without any tax issues related to it. It was
19 simply a notification that he had failed to do.

20 So, one of the things that you do, I would
21 respectfully suggest -- the government is arguing a series of
22 circumstantial inferences they want you to take. I'm
23 suggesting to you that you also have direct evidence, which is
24 a specific statement by the defendant and would ask you, based
25 on that, to enter findings of not guilty relative to the FBAR.

1 Judge, the other charge I wanted to talk about,
2 briefly, before I go back to what I consider to be the main
3 charge, is the aggravated identity theft. Contrary to what the
4 government has suggested, it seems clear, based on Exhibit
5 Number 118, which has been discussed, which you have, which
6 you've seen several times, Mr. Chaudhary specifically said
7 that, as the government conceded in its closing, that he sent
8 that email. They don't want to believe that, and, obviously,
9 that's their decision to make, but that was his testimony. He
10 said that that was not sent, and, as a result, in that regard
11 on the aggravated identity theft charge, if you choose to
12 believe that portion of his testimony you have that direct
13 evidence, again, that my client did not use his email and
14 assume that identity, and, therefore, again, the aggravated
15 identity theft charge would fail.

16 Likewise, I would suggest to you, respectfully, that
17 the government has not introduced any evidence that
18 Mr. Chaudhary prohibited my client from using the email address
19 as well. So, in regard to that, that's why I believe that the
20 ID theft -- or, excuse me -- aggravated identity charge should
21 be dismissed as well, your Honor.

22 I want to switch now, Judge, to talk about the money
23 laundering and transportation of stolen money counts, because
24 there is a legal argument that I want to make to you before I
25 get into the issues that I want to kind of give you an

1 historical. So, with that, the money laundering charge, if you
2 look at Counts 19 through 22 -- and I guess I should step back
3 for a moment, because I think you need to frame this argument
4 I'm going to make to you now with the first counts, Counts 1
5 through 18, and they give you a specific time frame,
6 specifically starting with Count 1, May 11th of 2015, and then
7 sequentially through Count 17 and Count 18 of July 13th, 2016,
8 and those are all the wire fraud charges. So, you have a date
9 range of May 11th, 2015 through July 13th, 2016.

10 Now, when you go to the first set of charges relative
11 to money laundering, Counts 19 through 30, Judge, I'll draw
12 your attention, first, to Counts 19 through 22 and those dates,
13 Count 23, and that date of May 18th, and then the following
14 sequential dates from July 18, '16 through March 15, 2018. And
15 if you go back to the language just preceding the counts, it
16 says that Mr. Alrai did knowingly engage in monetary
17 transactions in criminally derived property of a value greater
18 than \$10,000 that was derived from specified unlawful activity,
19 namely wire fraud, as alleged in Counts 1 through 18.

20 So, the government has chosen, for whatever its
21 reasons and rationale, to specifically talk about the money
22 laundering charges in Counts 19 through 30 as tied to the funds
23 received in Counts 1 through 18. Now, could the government
24 have chosen a different path? Certainly, it could have. I
25 know the Court questioned the government a few times during the

1 course of trial about decisions it made relative to certain
2 indictments. So, the government chose this path.

3 So, if you look at Counts 19 through 22 of the money
4 laundering charges, Judge, you have dates ranging from April
5 21st, 2014 to January 20th of 2015. All four of those dates,
6 Judge, precede the first date of May 11th, 2015 of the wire
7 fraud transactions, and, as a result, it would be a factual
8 impossibility for any funds to be derived from those wires,
9 and, as a result, those counts must fail.

10 I would also suggest, Judge, if you look closely at
11 Counts 35 through 42, Count 35 is actually May 18th, 2015 and
12 is actually the only date in these money laundering charges
13 that we're looking at that falls within the date range of
14 Counts 1 through 18. All the other dates from Counts 36
15 through 42 fall outside and after the counts alleged in Counts
16 1 through 18. And I would suggest that's important, Judge,
17 because the government is alleging that the money in these
18 specific counts, 36 through 42, came from the funds in Counts 1
19 through 18.

20 Now, if we look at this -- and I'll give somewhat of a
21 hypothetical, if you will. If we have money coming from United
22 Way into a bank account to DTS, being paid to DTS, and you
23 heard the government produce evidence relative to the fact that
24 it did not try to distinguish between funds received that were
25 legitimate and funds that were illegitimate, it took all money

1 from Robert Allen and all money from United Way and put it into
2 one bucket that it called "dirty money." However, how can you,
3 as the trier of fact, tease out what is clean money and dirty
4 money for services that were performed and appropriately
5 compensated if all the money is in one bucket and it's all
6 considered dirty? That means with these counts -- these would
7 have to be Counts 36 through 42 -- if there is money in these
8 accounts I would suggest that an inference you would need to
9 draw, if there's circumstantial evidence that we're talking
10 about, if there is a reasonable and rational explanation
11 consistent with innocence, that you would draw that rational
12 and reasonable inference towards innocence, which would mean
13 the funds that could have been used and derived appropriately
14 and legitimately could have been the subject of these counts
15 versus what the government wants you to characterize as dirty
16 money.

17 THE COURT: Can you hold on for a second?

18 MR. HARRINGTON: Yes, Judge.

19 (Pause)

20 THE COURT: I don't mean to hold you up. Okay.

21 Please proceed.

22 MR. HARRINGTON: So, again, Judge, the argument that
23 I've laid out to you relates to the predicate Counts 1 through
24 18, and then the other counts, 19 through 22, which I've
25 indicated precede Counts 24 through 30, which come after the

1 dates in Counts 1 through 18, again, Count 23, the only one
2 that falls within that time frame. And, again, the government
3 specifically used this language leading into that paragraph for
4 the money laundering tying it to Counts 1 through 18.

5 I'm going to skip over to Counts 31 through 42 for a
6 moment and focus in on Counts 43 through 50, and it's the same
7 argument, Judge, that I'm going to make to you. Because if you
8 look at the language in the paragraph preceding this series of
9 charges, and, obviously, these are additional money laundering
10 charges, Counts 43 through 50, Counts 43 and 44, again, predate
11 the time frame alleged in Counts 1 through 18, so a factual
12 impossibility. Counts 47, 48, 49 and 50 are all after the
13 dates alleged in Counts 1 through 18. So, Counts 45 and 46
14 would be the only dates in this series of charges that fall
15 within the date range of Counts 1 through 18.

16 Turning back to, Judge, because there is a distinction
17 here that I want to draw your attention to, if you look at the
18 Paragraphs 31 through 42, so we've done the first set of
19 charges on the money laundering, and then we go over to this
20 transportation of stolen money series, the language is
21 different. It does not specifically reference Counts 1 through
22 18 and the money relative to that. And the reason I raise that
23 is I'm not making the same argument relative to this paragraph.
24 And I also point it out because it's very specific language
25 that the government chose for the paragraphs relative to Counts

1 19 through 30 and Counts 43 through 50. For some reason it
2 chose not to put that language in this paragraph. So, clearly
3 a conscious decision by the government to choose this language.

4 THE COURT: Hold on a minute. Make this point again.

5 MR. HARRINGTON: Sure.

6 THE COURT: I noticed a difference between the stolen
7 money counts and the wire fraud, the variance in the language.
8 I'm not sure I understand the one you're making now.

9 MR. HARRINGTON: I think we're talking about the same
10 thing, Judge.

11 THE COURT: Oh, okay.

12 MR. HARRINGTON: So, the variance is in counts on the
13 money laundering, if you look at the counts, you have Counts 19
14 through 30.

15 THE COURT: They cross-reference paragraphs --

16 MR. HARRINGTON: 1 through 18.

17 THE COURT: -- 1 through 18.

18 MR. HARRINGTON: Yup.

19 THE COURT: And the point is the one I had noticed in
20 my review of the situation was that that wasn't the case
21 vis-a-vis transportation of stolen money.

22 MR. HARRINGTON: Correct, Judge.

23 THE COURT: Is that what you're saying?

24 MR. HARRINGTON: It is. Yup.

25 THE COURT: Okay. And so, I know what inferences I

1 draw from that, but I was getting a little lost trying to find
2 it, what you were just talking about. So, make your argument
3 again, please.

4 MR. HARRINGTON: I will, Judge. So, if you look at,
5 just by comparison, because I think we are talking about
6 exactly the same things, you look at the introductory paragraph
7 on Counts 19 through 30. So, you go to Paragraph 37, and then
8 you have the defendant's name, and then you get into, "Did
9 knowingly engage in," and that's where you have the specific
10 language relative to Counts 1 through 18. That same language,
11 if you go to Counts 31 through 42 and the introductory language
12 there --

13 THE COURT: In Paragraph 39, right?

14 MR. HARRINGTON: That language is not there. You go
15 over to the following page, it just talks about knowingly.

16 THE COURT: Right. That frees those counts from any
17 tie-in, right?

18 MR. HARRINGTON: Correct. I agree, and that's why I'm
19 distinguishing those counts.

20 THE COURT: To make the point that the language
21 matters in the money laundering counts?

22 MR. HARRINGTON: Correct.

23 THE COURT: Okay.

24 MR. HARRINGTON: And I would also suggest to you,
25 Judge, that, although that is distinguished, as you have

1 pointed out in some questions that you've brought up a few
2 times, the government has specifically alleged the crimes
3 charged and really has tied this whole indictment, in the
4 defense's opinion, to Counts 1 through 18. So, when you're
5 looking at these counts in paragraphs or charges 31 through 42,
6 I would suggest you can reasonably look back to Counts 1-18 as
7 your framework for judgment. I don't think that you can
8 necessarily look back beyond those, but I think you can confine
9 yourself, given the way that the government has drafted it.

10 THE COURT: Vis-a-vis money laundering.

11 MR. HARRINGTON: Yes, Judge. So, I think that you
12 have the gravamen of those arguments that I'm making, Judge, so
13 I'm going to move on to a different subject, but I would
14 suggest to you, respectfully, because of this --

15 THE COURT: But didn't a few minutes ago you make an
16 argument regarding Counts 36 to 42, and those were the
17 transportation of money laundering counts, and you said,
18 because they occurred outside and after the Counts 1 through 18
19 time period I should acquit on those, and I didn't understand
20 that, because for the very reason -- the argument you're making
21 now, there's no anchoring language to those wire fraud counts.

22 MR. HARRINGTON: There isn't. And you know what I
23 think I did, is I think I misspoke. When I was saying Counts
24 31 through 42, I think I said --

25 THE COURT: All that argument was directed toward

1 money laundering.

2 MR. HARRINGTON: Correct, 19 through 30, and then I
3 think it's 43 through --

4 THE COURT: You just alleviated a great deal of
5 confusion.

6 MR. HARRINGTON: Yeah. And that was my mistake,
7 Judge. I misspoke on the counts.

8 THE COURT: Okay.

9 MR. HARRINGTON: So, with that said, Judge, based on
10 those arguments to you regarding the crafting of the
11 indictment, the time frames that are specified, I'm suggesting
12 on those counts that I've specified to you that you should
13 enter a dismissal based on that, because it basically is an
14 impossibility for the government to sustain its burden, given
15 the time frames and the structure of the indictment.

16 Obviously, this is more of a legal argument to you,
17 Judge.

18 I want to move now into more a factual and historical
19 piece of the case. So, in this regard, Judge, the government
20 had talked about this case kind of starting in 2013, but, in
21 fact, the case actually started, as Munawar Chaudhary had
22 testified, in roughly 2007, when he established DigitalNet
23 Pakistan before he came to the United States, and that he had
24 his son-in-law Ahmad and his son Jawad and his daughter as the
25 initial startup there, and he testified additionally that

1 Pakistan DigitalNet had anywhere from 20 to 30 employees, that
2 there was a large boom in Pakistan in the IT industry, and they
3 were trying to capitalize on it, and that they did have
4 businesses throughout the Middle East.

5 He comes over to the United States roughly in 2008 due
6 to medical reasons and ultimately starts residing with my
7 client and his wife and children. My client is working in the
8 field of IT, ultimately working with Robert Allen and then
9 crossing over into the United Way. During this time
10 Mr. Chaudhary is talking with his family members, including my
11 client. He wants to start DigitalNet in the U.S. and he talked
12 and testified about the fact that he wanted to establish
13 something that he could leave to his family when he passed.
14 And he talked further about the qualifications of the people in
15 his family, his son, who was an IT expert, Jawad, his son, who
16 also had significant training, education in IT, and his
17 son-in-law, again, also someone who had significant IT training
18 and skills.

19 So, the basis was started many years before we get to
20 2013. And the reason that that's important, Judge, is one of
21 the things that the government is trying to argue is this was a
22 scheme -- this creation of DigitalNet was a scheme created to
23 defraud Robert Allen and United Way, but it was not. It was a
24 business that had been started years before. So, in that
25 regard I would suggest the government would fail on this idea

1 of DigitalNet being, you know, developed, started and
2 instituted as a scheme to defraud.

3 In regard to I think a central question that you have
4 to ask yourself in this case, Judge, is does an omission
5 constitute fraud, does a breach of a fiduciary duty, a failure
6 to disclose the relationship between the defendant and
7 DigitalNet constitute fraud, and I would suggest to you, and
8 you asked me that question the other day, I am arguing to you
9 that it does not, that in and of itself the failure to disclose
10 is not fraud as it relates to the contract, that these
11 contracts, as you've seen, went through a process, an RFP
12 process. Although many of the witnesses wanted to downplay
13 their roles, there are many emails relative to this that are in
14 evidence, starting with the exhibits that the defense has put
15 in, starting with Exhibit L, and all the way through. There
16 are numerous, numerous emails that the Court will be able to
17 look at that talk about the contract terms, that talk about the
18 RFP process, that talk about the scoring process, and in that
19 regard that process was an open and fair process.

20 The fact that members of the United Way may have
21 chosen not to further engage in the process is different than
22 my client concealing or refusing them to participate in the
23 process or any of those things. This was a process that was at
24 the top overseen by Patricia Latimore. There were other
25 members such as Nancy Powers, Dominec Pallaria. We also had

1 outside people such as Stan Burrows, Jack Rotondi. All of
2 these people involved in the process were able to ask
3 questions, to criticize contract formation and ultimately sign
4 off on the contracts. So, to try to portray this as simply
5 something that my client did all by himself is not an accurate
6 or fair characterization of the process.

7 Perhaps United Way's process was flawed, perhaps it
8 could have been better, but it was not a process that my client
9 created. Contrary to what the government had asserted, they
10 said that my client knew the United Way RFP process and
11 exploited it, he had never done an RFP process with the United
12 Way, never. He was hired in 2013 and had never done an RFP
13 process. The whole process that was done at the United Way was
14 done according to their own internal RFP process. They
15 appointed people to the committees they wanted to appoint.
16 Those individuals had duties and responsibilities. Whether
17 they followed those responsibilities, whether they should have
18 dug deeper or things of that nature, that's not my client's
19 obligation. He had a fair and open process. The documents
20 were available to people. If they wanted to ask, they could
21 have asked.

22 And one thing that is very interesting, Judge, and
23 will be I think also a critical thing for you to think about,
24 because one of the arguments I'm making to you is that the
25 United Way received the benefit of the bargain, that all the

1 contracts that were entered into between DigitalNet and United
2 Way were fully performed and all services provided. And the
3 reason that that's an important factor to consider is, if you
4 listen and go back and think of all the testimony from United
5 Way personnel, nobody said that the services contracted for
6 weren't provided. Patricia Latimore, in particular, said the
7 services were provided, that United Way was satisfied with the
8 services provided, although she gave a caveat saying, "I think
9 that the services we're getting now are better." Well, that
10 may be, and that may be her opinion, but that doesn't mean that
11 the services weren't delivered, and, clearly, according to
12 their own testimony, the services were satisfactory. Couple
13 that with the exhibits that you have regarding Mr. Alrai's job
14 performance and evaluations, all of them glowing, all talking
15 about superior achievements and achieving their goals and so
16 much so that after two years at United Way he was promoted and
17 promoted to Vice President and Chief Information Officer;
18 that's how satisfied the United Way was with the improvement in
19 their IT process and the services that they were receiving.

20 Also important for you to consider, Judge, is in
21 regard to services provided think about the budget and some of
22 the information you've heard about budget. And this comes from
23 Mr. Naviloff. So, the government has talked about markups,
24 exploitation, basically gouging, those types of things. So,
25 when my client came onboard in 2013 to the United Way they were

1 in an IT mess, and you've heard that clearly from many
2 witnesses, and that they wanted to go in a new direction.

3 You'll see emails both in 2012 and into 2013 in the
4 defense exhibits talking about how they had 19 separate
5 vendors, that the services were a mess and not being provided,
6 and they wanted someone to change that. Mr. Alrai comes in and
7 an IT health assessment is done. You heard testimony relative
8 to that. And, although the government kind of wanted to make
9 it sound like it was Mr. Alrai's idea to do the IT health
10 assessment, there was also clear testimony that the United Way,
11 even before Mr. Alrai was hired, was talking about doing an IT
12 health assessment in the years preceding 2013. You heard
13 Mr. Meyer say that, when somebody comes on and an organization
14 is thinking about a change in IT vendors, it is appropriate and
15 routine to do an IT health assessment. So, trying to say that
16 Mr. Alrai made up this idea of doing an IT health assessment so
17 that he could then get DigitalNet onboard is not accurate. An
18 IT health assessment was done, and I think, contrary to what
19 the government had indicated, it was discussed with Pat
20 Latimore. Ms. Latimore talked about it and talked about the
21 fact that there was an IT health assessment done and was
22 reviewed with Mr. Alrai, and then they moved forward with it.

23 Now, in regard to pricing and the budget, I want to
24 come full circle to that. When Mr. Alrai came onboard, the IT
25 budget at United Way had gone up and down, and there are

1 exhibits for your review where it was always over \$1,000,000,
2 1.2, 1.3. There was a spike before Mr. Alrai even got there of
3 I think \$2,000,000 the year before he even got there. And then
4 you heard Mr. Naviloff say in the entire six years that
5 Mr. Alrai was there as the CIO -- well, senior and then CIO --
6 but in the six years he stayed within United Way's budget for
7 the entire time period, and there was only one time that he
8 went over, I think he said, by approximately \$10,000 in 2018.
9 So, the IT budget for the United Way does not dramatically
10 increase. There are no gouges, there's no exploitation. The
11 budget remained consistent, the services were delivered and the
12 services improved all within the same budget with the United
13 Way. That, I would suggest to you, shows clear evidence of
14 delivery of services and, as a result, the delivery of services
15 is central and key, because if those services are delivered on
16 the contracts there is no intent to defraud the United Way.
17 Performance on all the contracts, delivery of the services.
18 Then, where is it that the crime has been committed? Simply in
19 the deception? I would suggest no. That's why you need more
20 than just the omission.

21 One of the other things that I think is very important
22 on this budget and cost analysis for the Court to consider is
23 what other evidence has the government produced that the
24 pricing that was done by Mr. Alrai was inappropriate in the
25 context of IT vendors? None. The only other information you

1 have is from Mr. Meyer, and the information provided by
2 Mr. Meyer indicates that he and his company are paying or being
3 paid over \$800,000 a year, but that does not include other
4 services and other services that were provided by DigitalNet on
5 special projects, on capital expenditures for things such as
6 computers, phones, wiring, routers, all of those things.
7 Mr. Meyer said, "Yeah, that's not included in what my costs
8 are; they have to pay extra for that, and if there are special
9 projects that have to be done, those can be additional costs to
10 United Way." So, that is not an apples to apples comparison,
11 and the government has no other information, no other vendors
12 that they can say, "Oh, yeah, the \$13,000 a month for
13 telephony, that's an inappropriate charge, or \$3,500 for
14 managing the Insight," or I should say, "SIP.US is an
15 inappropriate charge." They have no other comparables, so they
16 just want you to conclude that it's inappropriate.

17 The other thing that I think is very significant for
18 you to consider in this case, and I would suggest you could
19 draw a negative inference against the government for this, is
20 the failure to preserve the IT environment in this case. So,
21 you heard testimony that Mr. Meyer came in I want to say in
22 April of 2018, about a month or so -- excuse me, I think it was
23 May, I apologize -- about a month before Mr. Alrai is
24 terminated on June 12th of 2018, and at that time he knew that
25 United Way was conducting an internal investigation. He also

1 knew that there was a criminal investigation going on, he knew
2 that law enforcement was involved, and they don't do anything
3 to preserve the IT environment as it existed on June 12th of
4 2018 so it could be analyzed, so that the Court could actually
5 see what was in place that this man had done relative to the
6 services the government is saying weren't provided.

7 And Mr. Meyer actually even went so far as to say he
8 initially did make a copy of certain servers, the OVH, as a
9 precaution but then never got them. He let OVH keep them and
10 then ultimately confirmed, he says, with OVH that they were
11 destroyed. And you have communication, clear communication
12 between Mr. Meyer and law enforcement, both Homeland Security
13 and FBI, about all of this stuff, and they never asked. I
14 mean, they know what this case is about. Law enforcement never
15 asked or even seeks to get that IT environment.

16 THE COURT: I want to make sure I understand. I
17 understand your argument. This is an argument, though, as to a
18 failure of proof on the government's part, right?

19 MR. HARRINGTON: It is, Judge.

20 THE COURT: I tried to be careful about not letting
21 Mr. Meyer testify about anything that wasn't disclosed to you.
22 That's not what you're saying here, right?

23 MR. HARRINGTON: No, Judge.

24 THE COURT: This isn't an evidentiary objection; this
25 is an argument about failure of proof?

1 MR. HARRINGTON: Correct, Judge.

2 THE COURT: Okay.

3 MR. HARRINGTON: Yup. And that's why I think it is a
4 very sizeable and significant failure of proof on the
5 government's part, because they want you to make decisions
6 about specific services such as CloudConnect, Insight and SIP
7 that I'm going to talk about in a minute, but they didn't even
8 preserve the environment. All they want you to go off of are
9 the invoices. And you even heard Mr. Naviloff, or actually --
10 yeah, it was Mr. Naviloff, talk about the fact that there was a
11 difficult process trying to match up DigitalNet invoices to
12 Insight and SIP invoices to basically figure out what the
13 services were. He was trying to make apples-to-apples
14 comparisons, but we have no guaranties if that's the case. The
15 only thing that would have guaranteed that is that IT
16 environment. Then there would be no dispute about what
17 services were in place.

18 And that includes a number of issues that the
19 government brought up and tried to adduce testimony on, such as
20 geographic diversity, high-availability backup. None of that
21 stuff is available for you except through the testimony of
22 Mr. Meyer, I suppose, and Mr. Meyer is the one who told
23 Mr. Naviloff about it. There isn't even an IT expert that came
24 in for the government to talk about this stuff.

25 One of the things that I want to focus on in regard to

1 CloudConnect, Judge, is you heard from the defense expert,
2 Jason Sgro, that his opinion was that Mr. Naviloff had made a
3 significant mistake in misunderstanding what the CloudConnect
4 service was that was being provided, and he tried to
5 characterize this as kind of just simply a pass-through
6 Mr. Naviloff did, and that if DigitalNet wasn't even in the mix
7 you could simply have gotten the services from CloudConnect
8 directly to United Way and without the markup, because he's
9 saying DigitalNet pays CloudConnect, you know, \$300,000, let's
10 say, but United Way is billed \$900,000 and I'm using just
11 random numbers. But that's not the case. There was a basic
12 and fundamental misunderstanding by Mr. Naviloff about what the
13 role of CloudConnect was, and Mr. Sgro explained that.
14 CloudConnect does not deal with end users. There has to be a
15 third-party vendor, and that was DigitalNet.

16 Additionally, another fundamental misunderstanding is
17 about what services CloudConnect was providing. You heard the
18 example of a sandbox, that CloudConnect provides the sandbox,
19 but all the stuff that's in the sandbox that has to be built is
20 done by the third-party vendor, and that included the hosting,
21 the security, all the infrastructure, all of those things. And
22 there was a little sheet that Jason Sgro put up, that visual of
23 all the services that are provided by the third-party vendor
24 and that were provided by DigitalNet in this case. But the
25 assumption by Mr. Naviloff, erroneously, was that CloudConnect

1 was doing all of that, and they weren't. That's not what they
2 do.

3 And so, the whole characterization, and you'll see
4 when you look at the records, the CloudConnect money that
5 they're talking about here, it's the biggest amount that
6 they're saying DigitalNet was paid for and shouldn't have been,
7 and it's based on a fundamentally flawed premise, and it's
8 based on the fact that Mr. Naviloff is not an expert in IT, and
9 he relied, it appears, on statements of Mr. Meyer and perhaps
10 some of his own IT, but we never got any statements or reports
11 from those individuals, and they are just wrong about
12 CloudConnect. And he even indicated in his testimony, when
13 cross-examined about it, that he didn't learn until later that
14 CloudConnect would only deal with third-party vendors.

15 And in this regard and the source of information from
16 Mr. Naviloff one of the things I would suggest you consider is
17 Mr. Meyer. Mr. Meyer, who is now the CIO at United Way,
18 through his business TBS he owns, he owns TBS himself. He owns
19 TBS. And it was interesting to note that there was no RFP
20 process for TBS being awarded this contract, that he actually
21 is acting in a dual role as the Chief Information Officer in a
22 full-time, he said, 40 hours a week, every day in the office in
23 United Way, and he's also maintaining his full-time job for
24 TBS. So, this sounds somewhat familiar, the only difference
25 being United Way knows Mr. Meyer's conflict.

1 THE COURT: Well, there's another big difference,
2 isn't there? He's not drawing a salary as an official at
3 United Way. Basically, TBS is the CIO of United Way now. It's
4 not as if there's a CIO -- I don't mean to interrupt.

5 MR. HARRINGTON: No, that's okay.

6 THE COURT: But that's a difference, too.

7 MR. HARRINGTON: That is a difference. You may recall
8 the questions about that, that his salary is rolled into that
9 cost, and he's also drawing a full-time draw on his job at TBS.
10 But I agree with you that is a distinction. Yup.

11 THE COURT: In addition to the one that you pointed
12 out, which is that everybody knows.

13 MR. HARRINGTON: Everybody knows. That's right. And
14 this goes to does the omission itself constitute the fraud.

15 THE COURT: Understood. You're asking me -- and I
16 appreciate this -- you're asking me to think about fraud in a
17 deep, thoughtful way and to really consider the fact that
18 misunderstanding or even omissions, failures to disclose don't
19 necessarily constitute fraud.

20 MR. HARRINGTON: Yes, Judge.

21 THE COURT: Or, more importantly, I think much more
22 importantly, actually, is that it undermines proof of intent to
23 defraud.

24 MR. HARRINGTON: That's right. The other thing in
25 regard to the information, just to focus on Mr. Meyer for

1 another minute, is the cost. You heard testimony about the
2 cost of running the IT systems, and Mr. Sgro, the defense
3 expert, told you that the cost to run it now would actually be
4 less than the cost to initially start it and get programs in
5 place and run it, and that's because you're going to have
6 additional expenditures, you're going to have much more
7 hardware installed, things of that nature. So, Mr. Meyer came
8 in and basically took over the process that was in place, and
9 he subsequently made changes to it, but there was already the
10 update that had taken place by DigitalNet over the course of
11 almost six years, and so you are, by virtue of that,
12 potentially going to have something that is less expensive.

13 The other thing that I wanted to talk about in regard
14 to cost, Judge, is one of the things that I know you were
15 interested in and there was a little bit of discussion back and
16 forth was about markup, and it raises the question of what's an
17 appropriate markup and is it a markup, and, in particular, I
18 want to focus in on the SIP relationship, because, as you heard
19 from Jason Sgro, SIP is not a service provider. They basically
20 provide the bandwidth or the line that will go in and out of the
21 business. The other stuff that goes with it to manage the
22 telephony system, whether it's the management of it, whether
23 it's fax, whether it's mobile, all of those other things, those
24 are other costs that get layered onto that.

25 And you heard Mr. Sgro testify about the difference in

1 the timing when the phone systems were implemented. There was
2 a PBX system, which was the initial system Mr. Alrai inherited.
3 They then transitioned that into the cloud, and then it appears
4 that, after that, it was transferred by Mr. Meyer to 8x8. So,
5 there's a transitional migration, and there's a couple of
6 contracts that relate to that, and so you have a change,
7 potentially, in the pricing. So, you were shown these
8 invoices, one for a thousand bucks from Insight and then one
9 for \$13,000 from DigitalNet, and you were saying, "What do you
10 think of that markup, Mr. Sgro?", and he had no comment. We
11 then kind of fleshed it out a little bit with some further
12 questions, because I didn't think he was clear on what that
13 meant, and that's when he talked to you about the other managed
14 pieces that could be rolled into that invoice, because you see
15 the DigitalNet bill says "Managed Telephony" on the invoice.
16 That's the \$13,000. The bill from SIP is only for the lines.
17 That's it. That's the difference between those. You're not
18 comparing apples to apples.

19 And so, the markup, as Mr. Sgro had said, is you have
20 to look at what's an appropriate payment or price for managed
21 telephony, and so the markup the government talks about, you
22 know, 900 percent, 1,000 percent, stuff like that, it's not an
23 accurate characterization of markup.

24 Likewise, in regard to Insight, which was ultimately
25 the kind of middleman for OVH and the servers, again, we don't

1 have the IT environment preserved, so we just are going on
2 testimony and so forth. But, again, no environment to analyze,
3 and you're going based just on invoices, and they, again, are
4 not, I would suggest to you respectfully, comparing apples to
5 apples on that.

6 You heard Mr. Sgro talk about the fact that the
7 diversity, if you will, geographic diversity, can be done in a
8 number of ways, one of which is you could have the company have
9 two different geographic areas where they have servers, but you
10 could also have diversity where you have the company have its
11 own servers and then the company itself, United Way in this
12 instance, having its own servers, and that is an acceptable
13 geographic diversity for backup, but we don't have the IT
14 environment to analyze to demonstrate that that was, in fact, a
15 geographic diversity in place.

16 Additionally, there was some comment about high
17 availability, and Mr. Sgro had distinguished between the fact
18 that, if an OVH center goes down, like it did here, there was
19 testimony it went down for a few days, that doesn't have
20 anything to do with whether the services were provided or not;
21 all it has to do with is whether the service went down. It
22 doesn't mean it didn't have this, you know, high-speed, high
23 availability.

24 So, a few more points, Judge. In regard to a couple
25 of points that were raised by the government in its closing,

1 one of the things it talks about is that, again, there was a
2 score sheet that was done in the RFP process, and it talks
3 about my client being the only one doing it and so on. So,
4 I've commented a little bit about the openness of the process,
5 the involvement of others. You'll see that in the email
6 communications between United Way personnel.

7 But one of the other things that is interesting is
8 have you heard any evidence that the scoring was actually
9 incorrect? And you can assume, for the sake of argument --
10 let's take it to its conclusion -- that my client scored it.
11 Let's just say he scored it; nobody else even looked at it. If
12 that scoring is accurate, that goes to whether or not there's a
13 fraudulent intent. Has the government shown you -- and
14 certainly it had availability of the contracts that they
15 received, they could have had somebody else, such as an IT
16 expert, independently score them and say, "Yeah, this is way
17 off. DigitalNet never should have got this contract. It was
18 inappropriate scoring." But they didn't, and you don't have
19 any evidence to that.

20 They talk about metadata, and one of the things they
21 want to argue is that, because of the metadata you saw relative
22 to a proposal submitted by DigitalNet, they had the answers to
23 the test. You may recall them saying they had four days that
24 they could look at stuff and then submit, and so they were able
25 to look at the other proposals. The problem is that they don't

1 have that information to back up, because the metadata, as you
2 heard, can be changed easily by a last view, a last save. That
3 doesn't have anything to do with when the United Way actually
4 received the RFPs on January 25th. So, they want you to make
5 the conclusion, they want you to make that jump, but there's
6 nothing in between. They just want you to make that leap.

7 They also talked to you about the references, and this
8 is an oddity, Judge, that I don't know what to do with. Pat
9 Latimore -- I guess maybe it goes to a credibility issue or a
10 believability issue. The government is basically saying that
11 my client made up references with Mr. Khan, Mr. Anderson and
12 Mr. Ejaz, with Mr. Anderson it was my email, Ms. Latimore
13 didn't speak to him, but she then says -- she testified
14 specifically that she had the correct phone number for
15 Mr. Khan, she had the correct phone number for Mr. Ejaz, and
16 the government actually confirmed with both Mr. Khan and
17 Mr. Ejaz when they were on the stand that those were their
18 numbers. And Ms. Latimore said she actually called them on
19 those numbers and spoke to them.

20 So, what to make of that? Were the witnesses
21 basically not wanting to get involved and not wanting to admit
22 that they actually did give references? Perhaps. It just
23 seems a very odd disconnect that Ms. Latimore is saying she
24 called those very numbers, spoke with those individuals that
25 answered, and this is what they told them.

1 In regard to Robert Allen, Judge, there were four
2 contracts, you heard. Three of the contracts were performed.
3 You heard a number of the executives talk about that. The one
4 that wasn't performed that they had issue with was the web
5 development. Mr. Riviera did say that he had some issues with
6 the phone contract, but the other witnesses didn't indicate any
7 issues with that. They indicated the other three contracts
8 were satisfied; the web one was the issue.

9 In that regard I'll point you to the exhibits that the
10 defense has submitted relative to extensive communications
11 between DigitalNet staff and Robert Allen relative to that
12 project. I'd point out to you that it was a six-month
13 contract, and for two of those months Robert Allen didn't have
14 a CIO in place, that there is email correspondence saying that,
15 even though this project got off track, DigitalNet's saying,
16 "We still think we can get this done for you." I submit to you
17 that, essentially, they had a new CIO come in, he wanted to
18 make changes, and he did, and part of that change was he didn't
19 want to go through with that web contract with DigitalNet.

20 And you heard testimony from Nadeem Yousuf, who had
21 actually also worked with Mr. Riviera, that the phone system
22 actually was fine in his system, and he was actually in charge
23 of that system. Oh, I apologize, Judge. I think I said
24 "Nadeem Yousuf," and I meant Kal Wahbe. My apologies.

25 THE COURT: Understood.

1 MR. HARRINGTON: One of the other things that the
2 government talked about was tax fraud or Mr. Naviloff's review
3 of the taxes, but the government also agreed in some questions
4 that the Court had submitted that my client isn't charged with
5 tax fraud, he's not charged with cheating. Mr. Naviloff
6 admitted that he didn't do an audit of the taxes, yet they want
7 to kind of do a dive into it to some extent and try to say you
8 should make some conclusions that he took inappropriate
9 deductions, even though they haven't had a formal audit done.
10 You should reject that relative to deductions and things of
11 that nature.

12 In regard to the harm that was done, so I want to come
13 full circle to one of the issues in this case relative to
14 fraud, and the government talked about that one of the things
15 that's at issue is it believes that the defendant interfered
16 with and harmed the intangible right of United Way to make
17 discretionary economic decisions, and that it only needs to
18 show that there is a possible resulting harm. What I would
19 suggest to you is that there's actually one further step, and
20 many of the courts who have reviewed these issues have talked
21 about is, it's not just possible harm. It should be more than
22 that, because the wire fraud statute can be so broad, as the
23 Courts have recognized, that there needs to be a showing of
24 actual tangible economic harm, not just a possibility, and
25 that's done in a way to try to limit the very, very broad scope

1 of the wire fraud statute.

2 In this case you have an individual that had contracts
3 put in place. There was a process for it. There was other
4 individuals who were involved in that process and the payment
5 of the contracts. You heard testimony relative to a whole
6 layer of individuals that payments had to go through to pay
7 DigitalNet from the United Way. This process was followed
8 internally. My client did not control it or have control over
9 it. The checks were paid. United Way paid DigitalNet. And
10 those monies were earned by the services that were provided.
11 Because all those services were provided, there is no fraud,
12 and what DigitalNet did with the money once it received it and
13 provided the services is beyond the scope of the indictment.
14 It is not fraud. They can buy land, they can invest in other
15 things, whatever they want to do. That's the money that's
16 earned.

17 And, as a result, if you go back to the beginning of
18 this, if you look at what intent is in this case for
19 defrauding, you will have your judgment informed by the fact
20 that services were provided, there was no economic loss that's
21 been proven, and, as a result, you should find Mr. Alrai not
22 guilty on all counts, Judge. Thank you.

23 THE COURT: Rebuttal?

24 MR. DAVIS: Good morning, your Honor.

25 THE COURT: Good morning.

1 REBUTTAL CLOSING ARGUMENT

2 BY MR. DAVIS: Let's start with aggravated ID. Mr. Harrington
3 said that when Mr. Chaudhary testified he said that he sent the
4 email to Jack Rotondi in 2016; he now remembered that. But
5 Mr. Chaudhary just a few lines later in his same testimony
6 said, well, he couldn't remember sending that email, and that
7 whatever he had said was based on his, Mac Chaudhary's, email
8 address. His own testimony in this trial, which is hardly
9 believable, was that he couldn't remember sending the email,
10 and that statement was impeached.

11 The important point, though, is whatever happened
12 between Mr. Chaudhary and his son about those emails, the
13 defendant controlled it and the defendant caused it, and even
14 if Mr. Chaudhary himself did send that email at his son's
15 direction, it's still a crime, and an authorization or a
16 consent to use his name in an email, if done for an unlawful
17 purpose, as here, is not consent -- is not lawful authority
18 under the aggravated ID statute. The case law is clear on
19 that. And so, the entire argument about Mr. Chaudhary and
20 whether he sent it is a red herring.

21 Now, another legal argument the defendant presses is
22 that the proceeds that were wired in this case are somehow tied
23 to or limited to the actual substantive counts charging wire
24 fraud, and that suggestion simply misunderstands the nature of
25 wire fraud. Wire fraud is three elements. Wire fraud is a

1 particular intent, and it's a scheme to defraud, and then it's
2 a wiring, or in the case of mail fraud it's a mailing, and that
3 wiring and that mailing are essentially jurisdictional
4 predicates. They're like a firearm having crossed
5 interstate -- a state line. It creates, allows the assertion
6 of federal jurisdiction over the act.

7 But the mailing or the wiring is not the crime. The
8 crime is the fraud scheme, and the proceeds are the proceeds of
9 that fraud scheme, and that's the definition that applies here.
10 The definition is in 1956(c)(9). It says "proceeds" is any
11 property derived from or obtained or retained directly or
12 indirectly through some form of unlawful activity, including
13 gross receipts.

14 Now, every -- all 18 counts in this case happen at
15 different times and involve different things, and that's always
16 true in mail fraud or wire fraud. Each wiring, each mailing is
17 a specific instance and a specific act. But the scheme charged
18 in Counts 1 through 18, which is very detailed in the
19 indictment, is the same, and it doesn't change over time, and
20 it's not limited if the wiring happened in 2015 or it happened
21 in 2016. It's the same scheme, the same scheme charged in the
22 indictment. And that's what the cases that I offered the Court
23 yesterday say, the Lo case from the Ninth Circuit, the Cox case
24 from the First Circuit. When you talk about proceeds in a wire
25 fraud or mail fraud context, you are talking about the proceeds

1 of the scheme; you are not talking about proceeds that is
2 somehow tied to or limited by the jurisdictional predicate that
3 allows the government to prosecute the scheme.

4 And that makes sense, in part, because think about it.
5 Lots and lots of wirings and mailings cannot be tied to a
6 financial amount, a number. You could have an interstate
7 wiring to set up a meeting. You could have an interstate
8 wiring to do just about anything in furtherance of a scheme,
9 and you can't say, well, \$70,000 is attributable to that wiring
10 or \$15,000 is attributable to that mailing. It's just a
11 jurisdictional predicate. And so, it would not make any sense,
12 as the defendant argued in the Lo case and was overruled, it
13 wouldn't make any sense to say, well, if the mailing in the
14 case was about a \$500 payment and that was the only thing it's
15 directly tied to, then the only proceeds in a six-year fraud
16 scheme are that \$500. That can't be, and that's not the law.
17 That's clearly not the law, and Lo says that, Cox says it.

18 THE COURT: I agree with you, but --

19 MR. DAVIS: Yeah, okay.

20 THE COURT: Well, wait. I agree with you on the law,
21 but can't it be narrowed by the way you've charged the case?
22 Can't the language of the indictment narrow it? I think it
23 can.

24 MR. DAVIS: I think language in the indictment
25 certainly can narrow just about anything, but this language --

1 I mean, the question is what is the reference to when it says
2 wire fraud is charged in Counts 1 through 18? And, again,
3 you've got to go back to first principles. Wire fraud is more
4 than the jurisdictional predicate act. Wire fraud is
5 essentially a fraud scheme.

6 THE COURT: Sure, but your introductory paragraphs in
7 1 through 18 is Paragraph 34, and it says -- this is the intro
8 paragraph, not the count -- it is says, "On or about the dates
9 set forth below." It says the crime was committed "on or about
10 the dates set forth below," and the date range is "May 11th,
11 2015 to April 21, 2016." I agree with your point on the law.
12 I think it's all 100 percent correct. All of those wire
13 statements were pursuant to a scheme, whether it was for one
14 victim or two. The fact is, though, the way you've charged the
15 case here says "on or about the dates set forth below." This
16 crime was committed, according to your indictment, "on...the
17 dates set forth below."

18 MR. DAVIS: But, your Honor, any mail fraud or any
19 wire fraud happens at a particular time with a particular
20 wiring, but that language is correct.

21 THE COURT: That language is correct, but it also
22 could have broadened the scope, and it didn't. That's a choice
23 somebody made, the Grand Jury made, but you could have said
24 from the beginning, as you alleged earlier in these paragraphs
25 that are explanatory, it alleged that the scheme took place

1 over a much longer period of time. And I think all of your
2 legal arguments make very good sense, and that these wire fraud
3 counts -- I'm sorry -- these money laundering counts could have
4 cross-referenced a broader timetable.

5 But how do I find that it was derived from the
6 criminal activity that you say is Counts 1 through 18 when you
7 describe the wire fraud count as occurring, occurring "on or
8 about the dates set forth below" in the dates of Counts 1
9 through 18?

10 MR. DAVIS: The top of the indictment, your Honor, at
11 Page 1 --

12 THE COURT: I'm looking at what the indictment says.
13 I'm agreeing with all that. I'm asking you a question about
14 Paragraph 34. You're alleging that the offense took place --
15 it says "the offense," next paragraph, "on or about the dates
16 set forth below," and you list however many dates it is. It's
17 17 dates.

18 MR. DAVIS: And I've referenced the scheme described
19 above.

20 THE COURT: The crime was committed pursuant to this.
21 We agree on the law, we really do, and I agree you proved it.
22 I think you've got a problem with the way you charged it.

23 MR. DAVIS: So, your Honor, the other thing I would
24 say about that is I have never seen a mail fraud or wire fraud
25 indictment that doesn't have just this language, and part of

1 the reason is, if you said, "On or about the dates of the
2 scheme," you would be giving constitutionally insufficient
3 notice to the defendant. The law requires an individual,
4 specific, concrete act.

5 THE COURT: Which you provided in your Counts 1
6 through 18 by referencing dates. It wouldn't make any
7 difference that you --

8 MR. DAVIS: But that doesn't limit the scheme or the
9 scope of the scheme or the length of the scheme that's
10 referenced. It's the same scheme throughout. There's no
11 ambiguity about that, your Honor.

12 THE COURT: I think we agree mostly on the law. I
13 think we agree mostly on the law. I think you've -- well, I
14 think what I think, and we have had the conversation.

15 MR. DAVIS: I don't know how else to charge wire fraud
16 or mail fraud, and I've never seen it charged a different way,
17 and each time identifying the date of the mailing or the date
18 of the wiring as the offense is correct and proper.

19 THE COURT: Are you really trying to tell me that
20 Paragraph 34 of your indictment, if it said something like on
21 or about -- the usual language I've seen in, I want to say
22 thousands, but I'm going to say hundreds because I don't want
23 to exaggerate, that say "during an unknown period but on or
24 about at least starting this date and through this date --"

25 MR. DAVIS: That's a conspiracy count, your Honor.

1 THE COURT: No, it isn't, necessarily. It can be a
2 scheme count. Sure, it's a conspiracy count, but it also can
3 be a way of discussing a scheme. Or you could have been very
4 specific. You could have just chosen the very first date that
5 you did allege here, by the way, very comprehensively,
6 Paragraph 8, beginning in 2012, the scheme. You say "from on
7 or about February 2012." I don't know why you're telling me it
8 would be improper to allege it there, not reallege it in
9 Paragraph 34, because that would give me at least a way of
10 hanging your money laundering -- it's only a few of the counts,
11 by the way, let's face it. It's not most of them, but there's
12 a few. A few of these counts predate your first wire fraud
13 substantive count, not most of them, a small amount.

14 But, look, I think to consider the crimes as charged
15 in the indictment I've got to live with the language you've
16 chosen, and I don't think any of your legal arguments are
17 flawed. I think they all make sense. I just think it's a
18 charging decision, a language decision that I'm considering
19 whether it has impact on your ability to prove guilt beyond a
20 reasonable doubt.

21 MR. DAVIS: Understood.

22 THE COURT: You understand.

23 MR. DAVIS: And, your Honor, the only other thing is,
24 the last point I'd make about that is, to do it otherwise --
25 because what I think the Court is suggesting is what the

1 government should have done is said the wire fraud offense
2 occurred in a six-month period or in a six-year period, each
3 charge, each separate -- but that would be constitutionally
4 imprecise, and it would raise double jeopardy problems if the
5 defendant is acquitted of something or not acquitted. What is
6 the charge? The government has to choose a date, it has to
7 choose a wiring and choose a mailing, and the defendant can
8 defend against that, and if he is not guilty of that mailing or
9 that wiring, if that wiring didn't occur, the government loses,
10 your Honor. It doesn't matter if the other six years there was
11 a scheme. The point of the indictment --

12 THE COURT: I think this wire fraud could have been
13 charged in any number of ways, and as long as the jury or the
14 trier of fact found unanimity as to at least one statement made
15 over the wires in furtherance of a scheme there wouldn't have
16 been a double jeopardy problem, as long as we had either a
17 Court finding or a jury verdict form that showed unanimity
18 around a wire fraud statement. I don't think a broader
19 definition in Paragraph 34 than the one you've chosen would
20 have put the defendant in any constitutional jeopardy.

21 MR. DAVIS: All right. I'll move on, your Honor.

22 THE COURT: All right.

23 MR. DAVIS: I want to talk about Pakistan a little bit
24 and the Lahore programmers. Mr. Harrington says, well, the
25 case started in 2007, and there's this family business with

1 global clients and all kinds of things going on, and somehow
2 that is a defense in this case. Your Honor, the Lahore office
3 is a red herring, and nothing that the evidence showed about
4 Lahore is a defense here.

5 Remember that the bank account in Pakistan opens in
6 April 2013, which is right after DigitalNet gets its first
7 contract. Remember that DigitalNet doesn't even begin in the
8 U.S. until August 2012, right before the contract for the
9 health assessment. Remember that the defendant, himself, tells
10 his tax preparer there's no income over there in Pakistan. And
11 remember that, whatever that operation is, it shuts down pretty
12 soon after the United Way spigot is turned off. There isn't
13 anything going over there that isn't sustained by United Way
14 largesse. Remember also the wires to Pakistan, 1.2 million, a
15 lot of money, but they're actually a small fraction of the
16 \$7,00,000 in this case. There's \$7,00,000, almost 6,000,000
17 all was in the U.S., and we're asked to look repeatedly at 1.2
18 million that got sent over there over a period of years. A
19 much larger fraction is sitting now or was sitting in the
20 defendant's personal accounts. Also remember that the work of
21 the programmers, whoever they were, was never more than a few
22 hundred thousand dollars, at most, for the actual United Way
23 projects.

24 What do we know about the money that was sent over
25 there? We know that the defendant spent \$400,000 on real

1 estate to buy property for himself; we know that he started a
2 separate gaming business that actually needs programmers; and
3 we hear some truth in his admission to Lorissa Guzman that
4 what's going on over there had nothing to do with United Way
5 but was all about his gaming business.

6 So, your Honor, 1.2 million went over there. Some of
7 that may have actually benefited United Way, but that doesn't
8 matter, because the definition of "proceeds" includes gross
9 receipts, and the money that United Way and Robert Allen wired
10 to that Pentucket Bank account was surely gross receipts and
11 proceeds. So, the Pakistani programmers, much as we talk about
12 them, are not a defense to anything in this case.

13 I want to talk about contracts a little bit, because
14 most of the defense here, other than intent, is that there was
15 value, there was performance on the contracts, that services
16 were delivered on the contracts, and one thing you notice in
17 the defense here is how much of a continuation of Mr. Alrai's
18 professional modus operandi this defense case is, and that case
19 is always to shroud yourself in the uncertainties of IT
20 services, always to suggest that there are additional costs,
21 there are shadowy additional IT management customized ingenuity
22 that's being provided for clients. It's like magic. And
23 that's what DigitalNet was doing.

24 Well, let's try to get real for a minute about the
25 business that Mr. Alrai was in, and I just want to bring up a

1 slide I showed from Mr. Terry's, which is Exhibit 153b, and
2 it's Bates 446, I think. There in the middle there is a
3 question that's being asked by the tax people, and the answer
4 to it says a lot. Every once in a while you get the truth from
5 Mr. Alrai. And here the question is, "On the checking account
6 Excel file in the history tab the payments to vendors,
7 utilities, goods and services, I need you to break it down
8 further." And what Mr. Alrai says is, "Almost all of it are
9 third-party services support and software that we use from
10 vendors like Google, Microsoft and CloudConnect, et cetera to
11 provide services to our customers." Almost all of it
12 third-party services.

13 All right. So, let's go to another page, which I had
14 previously shared in the same Exhibit, 153b.

15 Ms. Sheff, do you have the other page we discussed?

16 This is in Exhibit 207, Page 568. It really isn't
17 that complicated what Mr. Alrai does. Look at the very top,
18 the numbers at the very top. The income is \$1.5 million for
19 this year, 2016, and the expenses are basically two things.
20 They are payroll, and those are the good, hard-working
21 DigitalNet employees Kal and Mr. Yousuf and Jasmin and,
22 presumably, perhaps a few programmers who get a little bit for
23 United Way projects. But that's about 125 grand. And then
24 under that are subcontractors, and that's the big one. That's
25 almost 400 grand, and that's people like CloudConnect and

1 Microsoft and Google and various original vendors that
2 DigitalNet is buying from and providing. But that's it. It's
3 about 525 grand, not quite, and it leaves a huge delta,
4 \$1,000,000 versus \$500,000.

5 And Mr. Alrai tries real hard, and he's very detailed
6 here, to identify other business expenses, but a lot of these
7 things are parking and meals and entertainment, and nowhere in
8 there is all this IT value, IT management, IT added service.
9 It's just this. And, as we saw, what Mr. Alrai further does
10 is, by using inter-account transfers, he adds \$1,000,000 to his
11 cost of goods sold and shows a much lower profit margin than he
12 otherwise had. But the point is, your Honor, it's not really
13 magic. What it is, is paying people to do -- paying Kal to
14 manage the network, paying the IT people, and then it's paying
15 these subcontractors for a lot of stuff that anyone can buy who
16 knows what they're doing in IT.

17 But the defendant always, always talks about what he
18 does, and so he talks about CloudConnect and about all of these
19 non-pass-through costs. I will say a couple of things about
20 that. The first is, and the important part is, that, when
21 DigitalNet sets up something, when it buys hardware, it always
22 bills separately, and all of the invoices are in, your Honor,
23 and tons of those invoices are not just about the monthly
24 service, but they're about startup costs, setup costs,
25 hardware. He's getting every penny. You can bet he's getting

1 every penny paid for him, right? So, that is billed for, and
2 to say that this is sort of part of the valuable magic that
3 DigitalNet provides is just nonsense.

4 And the other point is that Mr. Naviloff, when he did
5 his analysis, he specifically excluded startup costs. Hundreds
6 and thousands of dollars are not being charged as loss to this
7 guy. What is being charged as loss is the enormous markups in
8 this case.

9 So, the whole thing about this kind of intangible
10 magic is not real, and Mr. Alrai is where he is today because
11 he's been so good at pretending that it is real, but it isn't.

12 Also about the contracts, your Honor, well,
13 Mr. Harrington says DigitalNet performed on the contract, but
14 the truth is it didn't perform. There were services not
15 provided, as we've talked about, and there are many things that
16 are included, such as 23 associates in the U.S., which are not
17 true. The main system manager is in Syria, is not even in the
18 U.S., and he promised they were in the U.S., and they're not.

19 And the biggest promise, the biggest service that was
20 supposed to be performed is that DigitalNet was supposed to be
21 a legitimate, qualified, experienced, real IT vendor, and he
22 said it over and over again as he's getting through the vetting
23 processes. He lied about that, and that's part of the
24 contract. Part of the contract is who is DigitalNet, and that
25 part is all fraud.

1 But the other problem with relying on the contract is
2 the contract itself is a corruption. The deceit goes to the
3 core of the contract in this case, as the cases talk about, the
4 Second Circuit case. There was no arm's length negotiation.
5 There was no fair market competition. The terms were dictated
6 by United Way's own trusted IT officer. There was no real
7 ability to enforce United Way's rights under the contract when
8 Mr. Alrai runs the show and holds all the cards. And so, your
9 Honor, a contract like this, these contracts entered into under
10 false pretenses are void at their inception. They are fraud.
11 They offer no shield and no haven in this case, because whether
12 there's a contract or not, on these facts it's still an
13 old-fashioned rip-off.

14 The last thing I want to talk about is intent.
15 Defendant says, well, there is no intent to defraud, and one of
16 the first things he asks is, "Well, does an omission constitute
17 fraud?" Are you kidding? This case is not about omissions.
18 It's about lies, affirmative lies every single year on a
19 conflict of interest form, over and over again in an RFP
20 process, over and over again in a vetting process in 2016, and
21 then in a million ways to his co-workers, to DigitalNet
22 workers, to everyone around him as the scheme is perpetrated,
23 and it's every single time Mohammad sends an invoice to get
24 paid. This case is not about omissions.

25 The defendant also says, "Well, the RFP process was

1 fair and open," and I think the argument is, well, because
2 United Way had a flawed RFP process, because, well, they could
3 have asked more questions, they could have been more involved,
4 the defendant is not guilty. He's just benefiting from a lax
5 attention at United Way, and it's kind of tough luck, you know,
6 in a way. "You screwed up on your process, and so you're
7 stuck." Well, that's not really right. He says, well, the
8 government says he did it all by himself, but that's exactly
9 what he did. He shanghaied the process, and he did do it all
10 by himself. He received the submissions, he read the
11 submissions, he rigged the system so that DigitalNet's RFP
12 response won, and he went forward. So, to say that somehow the
13 United Way's flaws excused the conduct makes no sense.

14 It's also baloney that United Way didn't want to get
15 involved. He did an excellent job, as he always did, in
16 fending off whatever controls were present. Stan Burrows
17 specifically offered to help and said that to him, and he said,
18 "No."

19 The other important part to think, your Honor, about
20 the RFP process is the process happened in two phases. The
21 first phase was getting the submissions and choosing a
22 presumptive winner of the bid, and that's phase one. But phase
23 two is when United Way actually tries to vet this new company
24 DigitalNet and find out facts about it, and that's doing due
25 diligence. It's about calling references, it's about finding

1 out who the principals are, it's about getting some business
2 history. And you can criticize United Way all you want, but
3 they actually did ask questions, and they did gather that
4 information, and at every single step of that process Mr. Alrai
5 lied again. So, to say that the RFP process was fair and open
6 and this whole thing is fine is simply untenable.

7 The defendant also talks about cost and pricing and
8 suggests somehow that United Way was really getting here a good
9 deal, or that at least it wasn't such a bad deal. I suggest
10 the evidence shows otherwise. What it shows is in a market
11 where IT costs are actually going down a little bit as
12 efficiencies are achieved and technology improves, Mr. Alrai
13 took his budget from about 900 grand to about 1.4 million and
14 was doing very well at United Way, so well that Jane Grady, as
15 the Court heard, the HR person at United Way, writes an email
16 sort of saying, "What is going on here? We've got 120
17 employees and we're paying 15- to \$20,000 per employee just for
18 computers." This is not a huge business, your Honor. It's not
19 a high-tech business. It's about charity. But that's a lot of
20 money.

21 And another confidence one can get is from Rich
22 Voccio, because Rich Voccio knows United Way. He's been in the
23 business many, many years. He worked at Rhode Island. He did
24 a benchmark calculation that the Court saw, and the benchmark
25 calculation shows that United Way was number one, number one in

1 IT costs among comparable United Ways. So, to say that this is
2 not an expensive IT service is simply wrong.

3 And then they point to John Meyer, and they suggest
4 he's -- I don't know. I'm not sure what they're suggesting,
5 but, as the Court pointed out, John Meyer is very different
6 from DigitalNet. With John Meyer United Way knows what it's
7 getting. He's getting no CIO salary. The whole thing costs
8 less now and the service is better, and even Pat Latimore is
9 quick to acknowledge that: "We thought we were happy with
10 DigitalNet. Now we really have seen the way it is." And so,
11 to say that somehow that the cost excuses this doesn't work.

12 The defendant also says, well, the references for
13 DigitalNet, the right number was called, and so these people
14 said something. But the point is, your Honor, about the
15 references, whatever happened there, and it is odd, it's odd
16 that someone calls a phone number for the real person and a
17 conversation occurs, and then they say later they never were
18 involved in that and don't know anything about that or
19 DigitalNet, the important point is whatever happened was a
20 fraud and a fraud orchestrated by Mr. Alrai, once again,
21 because what is very clear is that the companies those people
22 work with had never heard of DigitalNet and never done business
23 with DigitalNet, as is true of every company in the U.S., but
24 they said they did and DigitalNet got a positive reference, and
25 that could not be and it could not be true, and it only

1 happened because, once again, Mr. Alrai controlled it in some
2 way that we don't even know, but he did.

3 But the last thing I'd say about intent, your Honor,
4 is that in all of the defense in this case the defense never
5 deals with the lies. And Mr. Hunter said at the beginning, and
6 I say it now, the way you know that this man knows that he
7 intended fraud is not so much the lies at the beginning but the
8 lies at the end, when in April of 2018 he's being talked to by
9 a CBP officer and he says that DigitalNet just is doing gaming
10 over in Pakistan, and that he doesn't have any international
11 business dealings, and he never wired money over \$10,000. And
12 then he sits down with John Mulvaney in what is, obviously, an
13 important final -- what could be final interview at United Way,
14 at his employer where he's been working for six years, and he
15 could have said, "You know what? I lied to get this business
16 because I was trying to get my -- you know, pull myself up by
17 my bootstraps, and I'm really embarrassed and I'm really sorry,
18 but, boy, have I worked hard for this company and, boy, am I
19 sure that I provided value." But that's not what happened.
20 Mr. Imran Alrai dug in, he doubled down, he lied over and over
21 again to John Mulvaney, and the only reason to do that is
22 because you know that the truth can't be defended.

23 Your Honor, 42 witnesses have come before this Court.
24 Their sworn testimony proves overwhelmingly that the defendant
25 committed fraud, that this really was an old fashioned rip-off

1 by someone who was trusted to do otherwise.

2 THE COURT: I had 38 witnesses. You had 42?

3 MR. DAVIS: I was told the government had 40, and then
4 there were two defense witnesses.

5 THE COURT: It doesn't matter. I've got 17 pages of
6 notes here with 38 witnesses.

7 MR. DAVIS: All right. Sorry, your Honor. I'll sit
8 down.

9 THE COURT: Not a problem.

10 MR. DAVIS: The defendants had a fair trial --

11 THE COURT: No question.

12 MR. DAVIS: -- and the evidence is overwhelming, and
13 it shows he is guilty as charged.

14 THE COURT: Thank you, sir.

15 Well, this won't take long. We have civil counsel
16 waiting for the next hearing, which was supposed to start half
17 an hour ago, but we've been going about 95 minutes. I won't
18 take much time with this, but I think it's important to do to
19 move things along a little bit.

20 As I just said, I've got 17 pages of notes here,
21 careful, typewritten notes -- you probably saw me tapping away
22 with my law clerk -- which I spent last night most of the night
23 going through and considering each witness one by one again. I
24 did it that way because I want to approximate what a jury does.
25 We always tell juries not to deliberate until they have all the

1 evidence. So, I didn't deliberate with myself about all the
2 evidence until I had it all, and I went through it carefully,
3 thought about the law, read your trial briefs again. Defense
4 counsel submitted some proposed findings this morning, which I
5 received in the spirit of a trial brief, advocacy piece, and I
6 considered it carefully.

7 So, I'm going to render these verdicts now. I want to
8 say this first: This was a long trial, obviously, two straight
9 weeks, two solid weeks. I can't think of a trial I remember
10 that was so professionally and collegially tried and well
11 tried. AUSAs Hunter, Le, Davis, Defense Counsel Ayer and
12 Harrington, very -- I've got to say, Mr. Alrai, you received
13 excellent representation in this case -- it's just a pleasure
14 to watch you work and learn the evidence here through your
15 presentation. There wasn't a moment in this trial of bickering
16 or fighting or anything except the most highly collegial --
17 even when you were contesting each other, objecting, arguing,
18 disagreeing -- it couldn't have been done in a more
19 professional way. You're really a credit to the Bar, all five
20 of you.

21 The Rule 29 motions are denied. Well, there was
22 really one motion at the end of the prosecution's case. I
23 think a reasonable finder of fact, given all the inferences
24 that are required under the rule, could return a guilty verdict
25 on every charge, even the ones I'm going to enter a verdict of

1 not guilty on, an acquittal, except for there's a few that
2 arguably could not as a matter of law, just based on the
3 charging language in the indictment; there's an argument that
4 they could not be the basis for a guilty verdict, but whether
5 or not that's true on those counts I'm just not convinced
6 beyond a reasonable doubt.

7 But, anyway, here are the verdicts: Counts 1 through
8 18 charging wire fraud, guilty. Whether or not these wire
9 communications were for the purpose of furthering or in
10 furtherance of a scheme to defraud one victim, the United Way,
11 or two victims, the United Way and Robert Allen Group, they
12 were in furtherance of a scheme to defraud, and that is
13 sufficient. I find that it was sufficient both beyond a
14 reasonable doubt both with respect to the scheme to defraud the
15 United Way viewed alone or a scheme to defraud both United Way
16 and Robert Allen Group. And I spent a lot of time last night
17 crossing off any evidence pertaining to Robert Allen Group and
18 viewing it as a single scheme against one victim as well,
19 instead of two, and literally not considering it in the context
20 of a scheme against one victim, and either way there's proof
21 beyond a reasonable doubt with respect to all 18 wire fraud
22 counts.

23 The duplicate billing, the failure to render services
24 in some cases, the astronomically excessive markups establish
25 fraud, as did the depravation of the victims' control over

1 their property and assets. That's when viewed through the
2 light of the defendant's many lies, deceptions and concealments
3 of various facts, material facts, including his conflict of
4 interest and affiliation with DTS.

5 On the money laundering counts, the Court finds the
6 defendant not guilty on Counts 19, 20, 21 and 22 for the
7 reasons -- I won't flesh it out. It's set forth in my
8 conversation with Mr. Davis, who makes a very good-faith
9 argument which is correct on the law, I think, but I just
10 disagree that the only way to charge this wire fraud was the
11 way that it was charged. The wire fraud counts could simply
12 make reference to wire fraud as alleged in the indictment or a
13 scheme of a certain time period, but both the wire fraud counts
14 are tied to very specific dates, and the money laundering
15 counts are tied to very specific counts. So, I just view it in
16 the way it's alleged I am not convinced beyond a reasonable
17 doubt that there was money laundering with respect to Counts
18 19, 20, 21 and 22.

19 The Court finds the defendant guilty on Counts 23, 24,
20 25 and 26, 27, 28, 29 and 30, all of which are money laundering
21 counts.

22 With respect to the transportation of stolen money
23 counts, Counts 31 through 42, the Court finds the defendant
24 guilty.

25 With respect to the next set of money laundering

1 counts, Counts 43 and 44, the Court enters the verdict of not
2 guilty for the same reasons the Court explained with respect to
3 Counts 19, 20, 21 and 22. These were money transactions that
4 occurred before the first substantive count, Count 1, and,
5 therefore, it couldn't have laundered that money. I do
6 understand the argument that they could have -- what I'm about
7 to say applies to Counts 43, 44 as well as 19, 20, 21 and 22.
8 Those counts certainly could allege or they allege -- strike
9 that. There is proof with respect to those counts that money
10 was laundered derived from criminal activity, including a
11 specified unlawful activity, which is wire fraud, as defined,
12 however, not vis-a-vis the counts referenced in the money
13 laundering counts that post-date some of these alleged money
14 laundering transactions in Counts 19, 20, 21, 22, 43 and 44.

15 With respect to money laundering counts 45, 46, 47,
16 48, 49 and 50, the Court finds the defendant guilty.

17 The aggravated ID theft is a difficult count for the
18 Court. My view of Count 51 is that I am persuaded that the
19 defendant committed aggravated identity fraud by a
20 preponderance. I'm persuaded even by clear and convincing
21 evidence. I'm not persuaded beyond a reasonable doubt, because
22 there's direct evidence from Mr. Chaudhary that he sent the
23 email, and I don't agree 100 percent with the prosecution's
24 argument that -- I agree that even causing him to send that
25 email could be an aggravated identity theft, but under the

1 circumstances in this case I'm not persuaded beyond a
2 reasonable doubt.

3 I don't think that's an inconsistency with Count 18,
4 because I still think it could be wire fraud and not be
5 aggravated identity theft if Mr. Chaudhary sent the email.
6 And, again, we had direct testimony. We had direct evidence.
7 Mr. Chaudhary is a witness that lacks credibility, to say the
8 least. The problem is it's hard to know which time he was
9 lying. More likely he was lying in court than lying to the
10 investigators, but he could have been lying to the
11 investigators to distance himself from the defendant's schemes
12 as a way of protecting himself in some way. It's less likely
13 than the lying in court, but I'm not sure. And, look, I hope
14 my bar for reasonable doubt isn't too high, but when I'm
15 dealing with a person's liberty what I need to know is I need
16 to feel like I know what happened, and that doesn't mean
17 knowing with absolute certainty. There's no such thing in
18 life. But beyond a reasonable doubt for me means pretty well
19 that I know, and I don't know about Count 51.

20 The same goes for Count 52 and Count 53. The Court
21 enters verdicts of not guilty on the failure to file the FBAR,
22 and that's only because, look, again, that one I'm actually
23 less -- I'm not even persuaded by clear and convincing evidence
24 that the defendant is guilty of those offenses, because we have
25 a lot of circumstantial evidence that Mr. Davis pointed out and

1 Mr. Hunter pointed out both today and yesterday in court, I
2 think it was on the Rule 29 motions, that Mr. Davis made a very
3 compelling argument regarding motive and a lot of
4 circumstantial evidence. It was a great argument, very
5 persuasive.

6 But the only direct evidence we have, which is an
7 exhibit and some testimony, is that the defendant said he
8 didn't know, and there's a scienter requirement about these
9 counts. It's not proven beyond a reasonable doubt. So, the
10 Court enters verdicts of not guilty on Counts 52 and 53.

11 As to forfeiture, I'm going to order forfeiture in an
12 amount to be determined. We'll figure out a way to nail it
13 down. I'm actually hoping you can come to some agreement on
14 that, but if you can't, of course I'll issue the appropriate
15 rulings. But the Court is ordering forfeiture, just not in a
16 specific amount.

17 That leaves two other issues. Then we'll take a small
18 break before we get to the civil case.

19 I'm sorry, Counsel, for keeping you waiting.

20 Neither party has invoked Rule 23(c) requesting
21 written or oral findings of fact or rulings of law before the
22 verdict, so those are the verdicts.

23 I want to reconvene after the civil hearing, so I'm
24 going to say -- I think totally it's going to take about an
25 hour, Counsel. Does that sound about right, civil Counsel,

1 about an hour? So, what I'd like you to do is -- and I have
2 another hearing at 1:00. So, I would like you to return at
3 12:30, and we're going to talk about detention or release.

4 Mr. Alrai, my instinct right now is to not let you
5 leave the courthouse. No disrespect. I have an obligation,
6 though, to ensure that you continue to appear. But you're with
7 counsel I trust, so if they leave the courthouse to get lunch
8 or whatever, you can be with them, but I don't want you to
9 leave your counsel. Do you understand?

10 THE DEFENDANT: I do.

11 THE COURT: All right. You've been completely
12 appropriate the entire trial, and from everything I hear you've
13 been exemplary under supervision, but the circumstances have
14 changed, so we're going to have to have a conversation and
15 hearing about detention or release.

16 Any questions, Counsel?

17 MR. DAVIS: No, your Honor.

18 MR. HARRINGTON: No, Judge.

19 THE COURT: We're in recess.

20 THE CLERK: All rise.

21 (Detention hearing transcript filed under separate cover)

22 (WHEREUPON, the proceedings adjourned at 11:18 a.m.)
23
24
25

C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of *United States v. Imran Alrai*, 1:18-r-00192-JL.

Date: 4/12/20

/s/ Brenda K. Hancock
Brenda K. Hancock, RMR, CRR
Official Court Reporter